



July 23, 2015

**Addendum #2**

**RFP # 1415-91**

**Design-Build Delivery of New School Facilities**

This Addendum is issued for the purposes of modifying or interpreting the solicitation documents by additions, deletions, clarifications or corrections as outlined below. The items in this Addendum take precedence over the referenced articles of the solicitation documents and/or specifications and become an integral part thereof in the execution of the subsequent contract.

Bidders must acknowledge receipt of the Addenda on the official bid forms.

**The following information is issued for the purpose of revising, clarifying, and/or adding to the specifications and solicitation documents or for the purpose of answering and/or clarifying questions from potential offerors.**

**Question 1:** Is an established energy modeling software like eQuest, Trane Trace, etc. in lieu of a Sefaira Systems file?

**Response:** No. However, offerors may utilize any validation software(s) in addition to the Sefaira design modeling software.

*The reason that people are asking for eQUEST or Trace to be used is because this is the status quo of the industry today. Typically, (if not using Sefaira), analysis is done late in design by a specialist within or outside the design firm using validation software (eQUEST, Trane Trace, EnergyPlus) to verify that the design that has been developed. Validation models, by default require design decisions to have been finalized. From the initiation of design to the validation is where Sefaira (our modeling software) is focused. It allows architects, engineers, and contractors to analyze early and often in design and compare multiple strategies to make smart, cost-effective decisions before validation analysis begins. The benefit to the owner is that the design team knows what to expect and is not blindsided by cost overruns later in the process.*

*There is no reason to not use other tools. Every tool has a purpose and place within the design process. The purpose for requiring Sefaira is to provide a clear, concise comparison of different design options (such as massing), daylighting, and HVAC options on a single platform. That is critically important. If every solution is developed and analyzed with different software tools - different file formats with different interfaces, inputs, and outputs (deliverables), it makes it difficult for anyone reviewing this material to make sense of it.*

*Sefaira uses the actual architectural model for both Sefaira Architecture and Sefaira (engineering) Systems. This provides transparency to the design team and the evaluation 'team', illustrating architectural elements as well as different design strategies. It is in the best interest of Horry County to seek transparency and an apples to apples comparison to make educated decisions on what is best for the county. The Sefaira models can also be used for Horry County's own purposes.*

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Generally speaking, our intention is to make sure that the difference in bids was clear and easily discernable to HCS at the time proposals are submitted. It is entirely reasonable for Horry County to allow a specific validation tool to be used as Design Development and Construction Documents are completed.

#### **Difference in Engines**

- Trace (uses mostly the DOE 2 engine) is widely used today for detailed loads analysis, and sometimes for energy as well, but mostly just for loads.
- eQUEST (DOE 2) is widely used as it has been around for 30 years and has the ability to perform detailed energy analysis and HVAC analysis on specific manufacturer systems.
- Sefaira Architecture (both Revit and SketchUp plug-ins, and Architecture web application) use the ASHRAE Radiant Time Series (RTS) methodology for the heating and cooling load calculations. You can get a better sense of the methodology from the *ASHRAE Handbook of Fundamentals* Chapters 17 and 18 related to residential and non-residential cooling and heating load calculations. The envelope/space use parameter assumptions are delineated there, also. Daylight analysis is performed using Radiance and DaySim. These are the industry standards for daylight analysis.

Sefaira Systems is a front end (web application) compatible with EnergyPlus, an open-source simulation tool maintained by the US Department of Energy and associated national labs, replacing DOE 2. It's powerful, extremely detailed, and rigorous. Sefaira software provides a way to perform calculations with minimal set-up. All of the inputs that go into the model are defined in an .idf file, which can be downloaded from the results grid for any option that is proposed. The idf file can be downloaded and run natively in EnergyPlus.

**Question 2:** The RFP defines the contracting type as "Design-Build" but does not reference the pricing structure of the project. Additionally, there is no location on the submission forms to include our price. Can you please describe the type of D-B contract the District plans to execute with the successful D-B firm (Cost plus fee, GMP, Firm Fixed Price)? Also, please confirm that our pricing is to be submitted as an exhibit to our AIA Form 141 and not in another location in the proposal.

**Response:** There will be a firm fixed price. The prices will. . . See attached document (Exhibit A to the Design Build Agreement). Mr. Halligan/Mr. Powell to develop. May be addressed by eval. cmte.

**Question 3:** Appendix E: ENERGY POSITIVE/HIGH PERFORMANCE DESIGN REQUIREMENTS: Energy Modeling: Appendix E indicates the "benchmark" from which the performance of your proposed design will be analyzed by the HCS using Sefaira is: ASHRAE/USGBC/IES Standard 189.1-2009 and ASHRAE 62.1. It is our understanding that Sefaira is not approved by ASHRAE as an energy model for compliance with ASHRAE 189.1. We typically do energy modeling throughout the design process and a construction compliance model, consistent with the description in your ED SPECS, however we use the ASHRAE approved eQuest energy model. Can eQuest be used for the ED SPECS energy modeling and to show net zero performance?

**Response:** No. All work will be modeled in Sefaira so that HCS has a consistent format to evaluate proposals from the offerors.

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*To the best of our knowledge, ASHRAE does not 'approve' energy modeling software. The teams have not been asked to validate their design based on ASHRAE 189.1; rather they have been instructed to use Sefaira to guide design based on the 189.1 standard.*

- Question 4:** Appendix E: ENERGY POSITIVE/HIGH PERFORMANCE DESIGN REQUIREMENTS:  
To achieve net positive energy the design will likely include a PV Solar System that puts power back onto the grid. Has Horry County Schools come to agreement with the local utility for each school, as to the utility accepting and paying the school system for power put back on the grid by the PV Solar System? If so, please provide information on this arrangement. If not, please outline how the school system anticipates this being addressed.
- Response:** No. There is no agreement with any local utility company. The comparison is between energy usage and energy production and is not measured in dollars. It is our intent to be ready for any opportunity that is made available by a utility.
- Question 5:** Paragraph 3.1.16 **Design Builder's Insurance and Bonds.** The Design Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B. There is no Exhibit B attached to the Draft Agreement. Is the District requiring a project specific "Design Build" surety bonds covering all aspects of the design build Agreement (design, construction and performance standards) or is the District accepting piece meal surety bonds covering only portions of the contract such as just the performance and payment for the construction portion of the work.
- Response:** Yes. We want a comprehensive, single performance bond on each project.
- Question 6:** Will the District accept a partial surety bonds from sub-contractors for portions of their work for which the subcontractor is responsible under the Design Build Agreement or will the District require the stated Surety Bonds originate from the entity entering into the Design Build Agreement with the District for 100% of the amount of the Design Build Agreement?
- Response:** No, the District will not accept partial surety bonds from sub-contractors for portions of their work for which they are responsible. Yes, the District will require that the stated Surety Bonds originate from the entity entering into the Design Build Agreement with the District for 100% of the amount of the Design Build Agreement.
- Question 7:** If the answers to questions 5 and 6 are in the affirmative, will the District allow a project specific corporate entity to be formed which would act as the signatory for the Design Build Agreement with the District and the key team members be subcontractors to the corporate entity?
- Response:** Yes.
- Question 8:** Paragraph 8.1.4 speaks to Actual Damages, paragraph 13.2.2.4 speaks to performance damages and references the Design Builder's performance bond and the response to Question 20 in Addendum #1 relating to the "energy performance guarantee". Is there any maximum limit of Actual Damages the Design Builder could incur for failure to perform under the terms of the Design Build Agreement?
- Response:** No there is no limit on Actual Damages. This is not liquidated damages.
- Question 9:** **Appendix A Project-Specific Schedule Requirements**, references time "to allow for proper punchlist corrections and staff move-in/setup". Is the Design Builder responsible for specifying, purchase, and installation of Furniture and Playground equipment?
- Response:** Yes, in coordination with HCS staff for selection of products or materials.
- Question 10:** There is no technology allowance noted. Is the Design Builder responsible for the purchase and installation of instructional related technology or is that a District responsibility?
- Response:** Yes, in coordination with HCS staff for selection of products or materials. An allowance of \$XXX is included in the "total project approved budget".

**Question 11:** Will the District provide test borings of all sites for the design builder to use in analyzing the use of a geo-thermal heat exchanger? If test borings are not provided, will the district hold the design builder liable if the actual performance of the proposed system is affected by results of test borings done after the proposal is submitted?

**Response:** Yes, HCS will provide basic geotechnical information. Terracon will provide information as requested by the district as soon as it is available.

*I believe this question presumes that a ground source heat pump is the optimal HVAC system. If an offeror(s) chooses to utilize this system, they are still required to meet performance requirements.*

**Question 12:** Given the limited budget, we assume the following items will be paid for out of funds other than the "total project approved budget". Please confirm that the following items are to be planned for but not provided by the design builder or consider including a technology allowance to pay for these items and increase the project budget accordingly. If the intent is that these items be included as part of the base proposal (not in an allowance), please consider increasing the budget accordingly and provide a detailed description of what is needed.

- o Servers, network switches, racks, wireless access points
- o Devices such as laptops, laptop carts, emergency backup, printers, copiers, desktops, I-pads, etc.
- o Wiring (the design builder will provide conduits for the HCS technology vendor)
  - Structured cabling, CATV
  - AV wiring
- o Intercom
- o Intrusion Detection (motion detectors and keypads)
- o Door access control (card readers, software, and server)
- o CCTV (cameras)
- o Phone system (IP handset, wiring, software, control computer)
- o Local sound systems (Gym, Auditorium, etc.)
- o Interactive displays (smart board and/or flat screen, associated speakers, and associated cabling)
- o Distributed antenna system (not required, but needed for cellular service to work in building)
- o TV's and display screens for conference and security

**Response:** See response to Question #10. Verify which items are included in allowance.

**Question 13:** Will HCS pay for the following equipment items with funds outside of the "total project approved budget"? If the intent is that these items are to be paid for by the design builder, please consider an equipment allowance for these items and then increase the total budget accordingly. If the intent is that these items be included as part of the base proposal (not in an allowance), please consider increasing the budget accordingly and provide additional information where specified items are desired).

- o Uniforms – (Provide a count, brand, and model number if this item is by the DB)
- o Books, paper, note pads. . .
- o Training room equipment – (Provide a brand and model number if this item is by the DB)
- o Wall pads in gym
- o Gym scoreboards – (Provide a brand and model number if this item is by the DB.)
- o Backboards – (Provide a brand and model number if this item is by the DB.)
- o Commercial washer and dryer – (Provide a brand and model number if this item is by the DB.)
- o Dimming, rigging, and theatrical lighting (if required)
- o Projector(s), screen(s) and rigging system – (Provide a brand and model number if this item is by the DB.)
- o Folding chairs, chair rack, and protective floor mat with rack – (Provide a brand and model number if this item is by the DB.)

- Speaking podium or lectern – (Provide a brand and model number if this item is by the DB.)
- Wrestling mats
- PE Equipment – (Provide a brand and model number if this item is by the DB.)
- Exterior lighting if required (no exterior lighting seems to be specified except for parking and general building lighting)
- Exterior trash cans
- Field repair kit if needed – (Provide a brand and model number if this item is by the DB.)
- Field lining equipment if needed – (Provide a brand and model number if this item is by the DB.)
- Mower – (Provide a brand and model number if this item is by the DB.)
- Soccer goals and equipment if needed
- Softball and baseball bases and equipment if needed
- Irrigation system
- Musical Instruments – (Provide a brand and model number if this item is by the DB.)
- Instrument storage cabinets – (Provide a brand and model number if this item is by the DB.)
- Choral risers
- Band chairs (moveable/stackable)
- Music stands – (Provide a brand and model number if this item is by the DB.)
- Stereo system – (Provide a brand and model number if this item is by the DB.)
- Band miscellaneous supplies – (Provide a brand and model number if this item is by the DB.)
- Maintenance and janitorial equipment and supplies (buffer, burnisher, trash cans, dumpsters, custodial carts, mop buckets, wet vac, vacuum, shop vac., hoses, ladder) – (Provide a brand and model number if this item is by the DB)
- Serving line equipment, cash drawers, register, kitchen equipment, concession equipment, small equipment, shelving, hoods, walk-in freezer, walk-in cooler, domestic washer/dryer, lockers, concession equipment

**Response:** Mark to verify which items are included in allowance.

**Question 14:** If the intent is that the design builder provide the following furniture out of the furniture allowance, please consider revising the furniture allowance as follows. A reasonable allowance for these items would be \$2,150.00 - \$2,300.00 per student. Please clarify what the design builder should provide within the allowance.

- Exterior benches
- Casework throughout the building (classroom storage, classroom filing, teacher's desk, administrative, reception, mail, trophy case, and workroom)
- Furniture throughout the building (administrative and instructional)
- Display boards throughout the building (whiteboards, tack boards)
- Mini blinds throughout the building
- Wall graphics (artwork and signage package)
- Toilet accessories (including paper towel dispensers in classrooms if needed)
- Cafeteria seating
- Library/technology center/collaboration space
  - Tables, seating, etc.
  - Shelving
  - Circulation hardware and software
  - Laminator
  - Library conference room furniture
  - Lectern
  - Library workroom casework and worktable
- Science equipment, goggle cabinet, fume hood (if needed), chemical and fire storage cabinets
- Nurses station equipment (wheel chair and first aid)
- Locker room lockers and benches
- Student oriented dashboard, software and hardware displaying data out of the building automation system
- Student lockers, if required (student lockers don't appear as a project requirement)

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- o Art room equipment and supplies to include kiln, pottery wheels, etc.
- o Storage shelves for general storage, art room, and book storage

**Response:** Mark to verify which items are included in allowance.

**Question 15:** Is the design builder responsible for demolition of the existing building at Myrtle Beach Middle School, and if so, should there not be an increase in the budget to cover the cost of demolition? If HCS is responsible for demolition, when will demolition be complete? If the design builder is responsible for demolition, when will the design builder have access to the site?

**Response:** The Design Builder is responsible for the demolition of the existing building. The cost of demolition is included in the previously published budget for Myrtle Beach Middle School, and no increases are being made for the demolition. The Design Builder will have access to the site as soon as the contract is executed. The District will entertain designs that allow the existing building to remain on the site through the 2015 – 2106 school year and then be demolished during the summer of 2016.

**Question 16:** While Sefaira software is a great schematic design tool, it does not contain the system options that we plan on including in our proposal therefore the output from this software will not accurately reflect the performance of our building. Would you please consider allowing design builders to use an alternate software such as Trace or let us know what specific outputs you would like to review that will allow you to compare the team's proposals? Again, this is a great tool, but given the fact that we will have completed design development documents and the software has limited system selection options, this software is not capable of accurately representing the performance of our building.

**Response:** The occupied mode design criteria (i.e. specific outputs) were provided in the response to Question # 24 of Addendum 1.

Regarding the use of Sefaira, . . .

**Alternate software may not be used to perform energy modeling. Failure to conform to the RFP may be grounds for disqualification.**

*This is another variation of the validation-related questions. Since they have already planned on a specific system and completed the design development documents, it appears as if they have a pre-conceived solution with no intention of performing analysis for the benefit and understanding of HCS.*

*Is design predicated upon the use of ground source heat pumps a specific request by the district?*

*It is our understanding that these are typically expensive systems. It doesn't make sense to arbitrarily assume that this is the best alternative or affordable, prior to modeling conceptual designs. This is one of the toughest systems for ANY tool to simulate because there are many variables in play. For example, correct soil properties are required as inputs used to iterate, analyze and size ground source loops.*

**Question 17:** As indicated in Addendum 1: question 16, if the design builder is expected to provide off site work such as road way improvements and utility extensions and do "normally required investigations", can you provide the assumptions used when HCS budgeted the projects? We assume your cost estimates for the project assumed some value for offsite improvements. Please provide any other information about road way and site improvements known or suspected by HCS staff. Lastly, please provide traffic studies that have been completed for each site.

**Response:** Offsite work to develop the property is to be included in the construction cost. No traffic studies have been completed. All available information will be issued in the topographical surveys and geotechnical results as soon as possible.

**Question 18:** Please provide a list of instructional and office spaces that require sinks.

**Response:** All OSF requirements and DHEC standards are to be followed when determining what spaces require sinks.

**Question 19:** Appendix I requires a functional performance test (FPT) and test and balance (TAB) be performed in June and December each of three years after the project is completed. Is it the intent that these activities are to provide seasonal testing and performance validation? If so, we agree with this retro or continuous commissioning concept. However, providing a complete TAB for the entire system is extensive, expensive and will not accomplish the intended result. Instead, we recommend TAB be provided as required to address deficiencies with the functional testing but in lieu of the bi-annual TAB, we recommend continuous commissioning with building analytics software. This is a much more comprehensive commissioning process and it will save hundreds of thousands of dollars that are needed to construct the building. Bi-annual TAB will not produce the detailed operational data needed to optimize the systems. Please confirm it is not the intent of the District for the complete system to be balanced as part of this bi-annual FPT? Please provide an industry standard protocol to which the FPT is to be performed or allow design builders to implement a continuous commissioning process with building analytics software and ongoing monitoring as the backbone of the effort.

**Response:** Dennis/Mr. Batson to help respond.

*I am unable to offer a response to this at this time.*

**Question 20:** Appendix I requires functional performance test to determine actual kWh output of the on-site source. There is also reference to the bi-annual FPT and overall kWh performance. However, it is not clear how building energy consumption is to be measured and there is no protocol within industry accepted FPTs for measuring energy consumption. We recommend the appropriate method from the International Performance Measurement & Verification Protocol (IPMVP) be used as the methodology to calculate modeled savings and measure actual savings over the three year term in lieu of the FPT. Is this acceptable?

**Response:** Mr. Batson to help respond.

*I am unable to offer a response to this at this time.*

**Question 21:** The allowances seem excessive in some cases in low in other cases. Please consider revising the amounts as follows and clarifying what items go in what allowance so that other important project requirements don't have to be reduced or eliminated. For fire alarm, hardware, furniture and HVAC controls, please consider allowing design builders to work with your preferred vendors to obtain accurate pricing.

- o Middle School and Intermediate School Allowance suggestions:
  - Furniture in Question 14 above: \$2,150.00 - \$2,300.00 per student
  - Owner contingency - \$600,000.00
  - Technology allowance – (amount depends on what is included)
  - Equipment allowance – (amount depends on what is included)
- o Elementary School Allowance suggestions:
  - Furniture in Question 14 above: \$2,150.00 - \$2,300.00 per student
  - Owner contingency - \$500,000.00
  - Technology allowance – (amount depends on what is included)
  - Equipment allowance – (amount depends on what is included)

a.) If HCS decides to keep the HVAC controls allowance in the contract, please clarify that the cost for factory mounted controls should be included in the HVAC allowance?

b.) If HCS decides to keep the fire alarm allowance, please clarify if this amount includes the sprinkler system?

**Response:** There are no changes to allowances and contingencies at this time except to include an allowance for technology. See responses to questions 10 and 12. Regarding factory mounted controls in the HVAC allowance, Mark/Dennis to verify. Regarding the fire alarm allowance, the sprinkler system is NOT included in this allowance. The sprinkler system is considered part of the plumbing.

**Question 22:** The RFP states in section 3.1.3 and 3.1.4 that the "New Conceptual Designs" and the HCS "Educational Specifications are design requirements. The Conceptual Designs found on the website listed in Appendix C include only Sketchup models or CADD plans. The Educational Specification in Section 3, Design Process Guidelines, Item 2 outline many deliverables (such as Capacity Calculations, Narratives, program data matrix, etc.) that are not included in the Conceptual Design referenced in Appendix C. Is the Complete Conceptual Design submittal prepared by SHW in 2014 (and on the website at that time) a part of this RFP or only the Floor Plans and Sketchup models listed in Appendix C?

**Response:** HCS did not originally include the narratives in the original solicitation documents because of differing energy systems. They are now included as an attachment for your review. Please note, however, that the narratives no longer support the Design and Performance requirements specified in this RFP. (Documents to be provided as attachment or placed on Google Drive.)

**Question 23:** If the Conceptual Design Packages as prepared in 2014 by SHW (and as outlined in the Educational Specifications on pages 33-35 are not available, is a Program Data Matrix available for each school so that the Design Build Teams can verify the program requirements against the conceptual designs?

**Response:** See response to Question 22.

**Question 24:** The building is defined sometimes as "Net Zero" and other times as "Net Positive". Please clarify the intention.

**Response:** All references in the solicitation documents are to be changed to "Energy Positive" which has been defined in Appendix E of the solicitation documents.

**Question 25:** Do we need to size and cost out the PV array?

**Response:** Yes.

**Question 26:** How important is economy of scale in this process – how likely are you to award all projects to the same Offeror? As the RFP is currently written, each project is a separate proposal and there is no ability to take advantage of the economies of scale of building multiple projects.

**Response:** Mr. Halligan/Mr. Powell/John to address.

**Question 27:** Per the directions on the Functional Performance Testing in Appendix I, please define "underperformance".

**Response:** Underperformance is defined as: the system does not perform as represented in the response of the Offeror to the evaluation committee.

**Question 28:** Is it acceptable to pull the Commissioning Agent costs into the Construction Budget, and self-perform the Commissioning?

**Response:** No.

**Question 29:** Is the 3-year Commissioning requirement for Functional Performance Testing part of the budgeted Commissioning cost line item in Appendix B, or is that cost a separate Operations & Maintenance cost for the Owner?

**Response:** It is included as part of the commissioning costs?

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**Question 30:** There are directions within Article 4 that all documents are to be portrait orientation. We may provide some architectural drawings with landscape orientation. Please provide direction on whether this is acceptable.

**Response:** Landscape orientation is acceptable.

**Question 31:** Can the buildings be reoriented on site, and can fenestration be adjusted?

**Response:** Yes, the buildings can be reoriented on site. Fenestration can be adjusted within reason but with the intent of the Conceptual Design illustrations being maintained.

**Question 32:** It is assumed that the conceptual plans are reflective of the quality and efficiency Horry County is seeking in the building designs. Would the School District like to offer additional comment relating to these considerations?

**Response:** No.

**Question 33:** The Ed Specs, in the paragraph describing Educational Space Types (as indicated in Section 2 and in images and photos on pages 10, 13, 15, 17, and 19 and elsewhere in this document) indicate considerable amounts of interior glazing between educational spaces and circulation spaces. The use of glazing at these locations is also shown in the Sketchup models provided. Is this a design requirement?

**Response:** Yes. Refer to the response regarding fenestration in Question 31. Minor changes are allowed as long as the intent of the design is maintained.

**Question 34:** Have all the sites indicated in Appendix F been through the approval process required by OSF?

**Response:** No site plans have been submitted to OSF.

**Question 35:** Some major mechanical systems are not currently able to be modeled and analyzed with the required software. In that case, how should design teams document their likely approach?

**Response:** Mr. Batson to address.

**All teams must utilize the modeling software prescribed in the RFP.**

*Sefaira Systems models just about every common system and most of the ASHRAE Appendix G systems. The only common system it does not support today is ground source heat pumps for the reasons mentioned above. We have discussed this with Sefaira and they have indicated they anticipate their software will be capable of modeling ground source heat pumps by 1 August 2015.*

**Question 36:** Article 2.1 of the RFP states that the proposers must perform consistent with the "Technical Specifications of HCS. Article 3 of the RFP does not mention "Technical Specifications" as part of the design requirements. There do not appear to be any "Technical Specifications" on the HCS district-wide website. Are the "Technical Specifications" available and are they a part of the design requirements?

**Response:** Delete all references to "Technical Specifications" supplied by the Owner in the RFP documents.

**Question 37:** Is both Sefaira Architecture and Sefaira Systems analysis a requirement of our proposals?

**Response:** Confer with Mr. Batson for verification.

**Yes. In order to obtain the proper output, both are required.**

Specifically for the purpose of comparing the design options from each bidding group involved. Horry County should insist on this because:

- Sefaira Architecture is required to identify the most impactful passive design strategies, to review specific strategies or combination of strategies into bundles presented as design options, daylight visuals of floor plates, and comparative annual EUI (energy numbers).
- Sefaira Systems is required to give users the ability to compare multiple systems types in the best interest of Horry County to identify and size the most relevant HVAC system, compare annual energy results based on a specific HVAC system chosen, annual energy costs, and to report this relevant data in a clear and concise way.

**HORRY COUNTY SCHOOLS**

**By:** *Darlyn B. Adams*

**Darlyn Adams, CPPO, CPPB  
Procurement Officer**



July 28, 2015

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**Response:** There will be a firm fixed price for each project, not a GMP or cost-plus-fee. The price will be inclusive of all allowances and must be within the budgets that have been provided. For information, a draft AIA A141 Exhibit A with mark-up is being provided with this addendum reflecting this answer. Please state the price in the transmittal letter for your proposal, so that it will be simple for HCS to locate.

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school, as to the utility accepting and paying the school system for power put back on the grid by the PV Solar System? If so, please provide information on this arrangement. If not, please outline how the school system anticipates this being addressed.

**Response:** No. There is no agreement with any local utility company. The comparison is between energy usage and energy production and is not measured in dollars. It is our intent to be ready for any opportunity that is made available by a utility.

**Question 5:** Paragraph 3.1.16 **Design Builder's Insurance and Bonds.** The Design Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B. There is no Exhibit B attached to the Draft Agreement. Is the District requiring a project specific "Design Build" surety bonds covering all aspects of the design build Agreement (design, construction and performance standards) or is the District accepting piece meal surety bonds covering only portions of the contract such as just the performance and payment for the construction portion of the work.

**Response:** Yes. We want a comprehensive, single performance bond on each project. Refer to the Attachment (Exhibit B).

**Question 6:** Will the District accept a partial surety bonds from sub-contractors for portions of their work for which the subcontractor is responsible under the Design Build Agreement or will the District require the stated Surety Bonds originate from the entity entering into the Design Build Agreement with the District for 100% of the amount of the Design Build Agreement?

**Response:** No, the District will not accept partial surety bonds from sub-contractors for portions of their work for which they are responsible. Yes, the District will require that the stated Surety Bonds originate from the entity entering into the Design Build Agreement with the District for 100% of the amount of the Design Build Agreement.

**Question 7:** If the answers to questions 5 and 6 are in the affirmative, will the District allow a project specific corporate entity to be formed which would act as the signatory for the Design Build Agreement with the District and the key team members be subcontractors to the corporate entity?

**Response:** Yes.

**Question 8:** Paragraph 8.1.4 speaks to Actual Damages, paragraph 13.2.2.4 speaks to performance damages and references the Design Builder's performance bond and the response to Question 20 in Addendum #1 relating to the "energy performance guarantee". Is there any maximum limit of Actual Damages the Design Builder could incur for failure to perform under the terms of the Design Build Agreement?

**Response:** No there is no limit on Actual Damages. This is not liquidated damages.

**Question 9:** **Appendix A Project-Specific Schedule Requirements**, references time "to allow for proper punchlist corrections and staff move-in/setup". Is the Design Builder responsible for specifying, purchase, and installation of Furniture and Playground equipment?

**Response:** Yes, in coordination with HCS staff for selection of products or materials.

**Question 10:** There is no technology allowance noted. Is the Design Builder responsible for the purchase and installation of instructional related technology or is that a District responsibility?

**Response:** Yes, in coordination with HCS staff for selection of products or materials. An allowance of \$XXX is included in the "total project approved budget".

**Question 11:** Will the District provide test borings of all sites for the design builder to use in analyzing the use of a geo-thermal heat exchanger? If test borings are not provided, will the district hold the design builder liable if the actual performance of the proposed system is affected by results of test borings done after the proposal is submitted?

**Response:** Yes, HCS will provide them. Geotechnical exploration is being performed by Terracon, and the results will be provided as soon as they are available.

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**Question 12:** Given the limited budget, we assume the following items will be paid for out of funds other than the "total project approved budget". Please confirm that the following items are to be planned for but not provided by the design builder or consider including a technology allowance to pay for these items and increase the project budget accordingly. If the intent is that these items be included as part of the base proposal (not in an allowance), please consider increasing the budget accordingly and provide a detailed description of what is needed.

- o Servers, network switches, racks, wireless access points
- o Devices such as laptops, laptop carts, emergency backup, printers, copiers, desktops, I-pads, etc.
- o Wiring (the design builder will provide conduits for the HCS technology vendor)
  - Structured cabling, CATV
  - AV wiring
- o Intercom
- o Intrusion Detection (motion detectors and keypads)
- o Door access control (card readers, software, and server)
- o CCTV (cameras)
- o Phone system (IP handset, wiring, software, control computer)
- o Local sound systems (Gym, Auditorium, etc.)
- o Interactive displays (smart board and/or flat screen, associated speakers, and associated cabling)
- o Distributed antenna system (not required, but needed for cellular service to work in building)
- o TV's and display screens for conference and security

**Response:** See response to Question #10. Verify which items are included in allowance.

**Question 13:** Will HCS pay for the following equipment items with funds outside of the "total project approved budget"? If the intent is that these items are to be paid for by the design builder, please consider an equipment allowance for these items and then increase the total budget accordingly. If the intent is that these items be included as part of the base proposal (not in an allowance), please consider increasing the budget accordingly and provide additional information where specified items are desired).

- o Uniforms – (Provide a count, brand, and model number if this item is by the DB)
- o Books, paper, note pads. . .
- o Training room equipment – (Provide a brand and model number if this item is by the DB)
- o Wall pads in gym
- o Gym scoreboards – (Provide a brand and model number if this item is by the DB.)
- o Backboards – (Provide a brand and model number if this item is by the DB.)
- o Commercial washer and dryer – (Provide a brand and model number if this item is by the DB.)
- o Dimming, rigging, and theatrical lighting (if required)
- o Projector(s), screen(s) and rigging system – (Provide a brand and model number if this item is by the DB.)
- o Folding chairs, chair rack, and protective floor mat with rack – (Provide a brand and model number if this item is by the DB.)
- o Speaking podium or lectern – (Provide a brand and model number if this item is by the DB.)
- o Wrestling mats
- o PE Equipment – (Provide a brand and model number if this item is by the DB.)
- o Exterior lighting if required (no exterior lighting seems to be specified except for parking and general building lighting)
- o Exterior trash cans
- o Field repair kit if needed – (Provide a brand and model number if this item is by the DB.)
- o Field lining equipment if needed – (Provide a brand and model number if this item is by the DB.)
- o Mower – (Provide a brand and model number if this item is by the DB.)
- o Soccer goals and equipment if needed
- o Softball and baseball bases and equipment if needed

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- o Irrigation system
- o Musical Instruments – (Provide a brand and model number if this item is by the DB.)
- o Instrument storage cabinets – (Provide a brand and model number if this item is by the DB.)
- o Choral risers
- o Band chairs (moveable/stackable)
- o Music stands – (Provide a brand and model number if this item is by the DB.)
- o Stereo system – (Provide a brand and model number if this item is by the DB.)
- o Band miscellaneous supplies – (Provide a brand and model number if this item is by the DB.)
- o Maintenance and janitorial equipment and supplies (buffer, burnisher, trash cans, dumpsters, custodial carts, mop buckets, wet vac, vacuum, shop vac, hoses, ladder) – (Provide a brand and model number if this item is by the DB)
- o Serving line equipment, cash drawers, register, kitchen equipment, concession equipment, small equipment, shelving, hoods, walk-in freezer, walk-in cooler, domestic washer/dryer, lockers, concession equipment

**Response:** Mark to verify which items are included in allowance.

**Question 14:** If the intent is that the design builder provide the following furniture out of the furniture allowance, please consider revising the furniture allowance as follows. A reasonable allowance for these items would be \$2,150.00 - \$2,300.00 per student. Please clarify what the design builder should provide within the allowance.

- o Exterior benches
- o Casework throughout the building (classroom storage, classroom filing, teacher's desk, administrative, reception, mail, trophy case, and workroom)
- o Furniture throughout the building (administrative and instructional)
- o Display boards throughout the building (whiteboards, tack boards)
- o Mini blinds throughout the building
- o Wall graphics (artwork and signage package)
- o Toilet accessories (including paper towel dispensers in classrooms if needed)
- o Cafeteria seating
- o Library/technology center/collaboration space
  - Tables, seating, etc.
  - Shelving
  - Circulation hardware and software
  - Laminator
  - Library conference room furniture
  - Lectern
  - Library workroom casework and worktable
- o Science equipment, goggle cabinet, fume hood (if needed), chemical and fire storage cabinets
- o Nurses station equipment (wheel chair and first aid)
- o Locker room lockers and benches
- o Student oriented dashboard, software and hardware displaying data out of the building automation system
- o Student lockers, if required (student lockers don't appear as a project requirement)
- o Art room equipment and supplies to include kiln, pottery wheels, etc.
- o Storage shelves for general storage, art room, and book storage

**Response:** Mark to verify which items are included in allowance.

**Question 15:** Is the design builder responsible for demolition of the existing building at Myrtle Beach Middle School, and if so, should there not be an increase in the budget to cover the cost of demolition? If HCS is responsible for demolition, when will demolition be complete? If the design builder is responsible for demolition, when will the design builder have access to the site?

**Response:** The Design Builder is responsible for the demolition of the existing building. The cost of demolition is included in the previously published budget for Myrtle Beach Middle School, and no increases are being made for the demolition. The Design Builder will have access to the site as soon as the 335 Four Mile Road, Conway, SC 29526 ■ PO Box 260005 ■ Conway, SC 29528-6005  
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contract is executed. The District will entertain designs that allow the existing building to remain on the site through the 2015 – 2106 school year and then be demolished during the summer of 2016.

**Question 16:** While Sefaira software is a great schematic design tool, it does not contain the system options that we plan on including in our proposal therefore the output from this software will not accurately reflect the performance of our building. Would you please consider allowing design builders to use an alternate software such as Trace or let us know what specific outputs you would like to review that will allow you to compare the team's proposals? Again, this is a great tool, but given the fact that we will have completed design development documents and the software has limited system selection options, this software is not capable of accurately representing the performance of our building.

**Response:** The occupied mode design criteria (i.e. specific outputs) were provided in the response to Question # 24 of Addendum 1.

Alternate software may not be used to perform energy modeling. Failure to conform to the RFP may be grounds for disqualification.

**Question 17:** As indicated in Addendum 1: question 16, if the design builder is expected to provide off site work such as road way improvements and utility extensions and do "normally required investigations", can you provide the assumptions used when HCS budgeted the projects? We assume your cost estimates for the project assumed some value for offsite improvements. Please provide any other information about road way and site improvements known or suspected by HCS staff. Lastly, please provide traffic studies that have been completed for each site.

**Response:** Offsite work to develop the property is to be included in the construction cost. No traffic studies have been completed. All available information will be issued in the topographical surveys and geotechnical results as soon as possible.

**Question 18:** Please provide a list of instructional and office spaces that require sinks.

**Response:** All OSF requirements and DHEC standards are to be followed when determining what spaces require sinks.

**Question 19:** Appendix I requires a functional performance test (FPT) and test and balance (TAB) be performed in June and December each of three years after the project is completed. Is it the intent that these activities are to provide seasonal testing and performance validation? If so, we agree with this retro or continuous commissioning concept. However, providing a complete TAB for the entire system is extensive, expensive and will not accomplish the intended result. Instead, we recommend TAB be provided as required to address deficiencies with the functional testing but in lieu of the bi-annual TAB, we recommend continuous commissioning with building analytics software. This is a much more comprehensive commissioning process and it will save hundreds of thousands of dollars that are needed to construct the building. Bi-annual TAB will not produce the detailed operational data needed to optimize the systems. Please confirm it is not the intent of the District for the complete system to be balanced as part of this bi-annual FPT? Please provide an industry standard protocol to which the FPT is to be performed or allow design builders to implement a continuous commissioning process with building analytics software and ongoing monitoring as the backbone of the effort.

**Response:** The intent of the FPT is to validate the performance of the building systems, including the HVAC systems and on-site renewable energy production. The FPT shall be conducted by an owner provided commissioning authority. This commissioning authority shall determine the protocol(s) for the FPT based on the Design-Builder's equipment designs and performance representations. Building analytics software does not replace the required Functional Performance Testing as originally indicated in Appendix I.

Appendix I shall be amended with regard to the Test and Balance (TAB) requirements as follows:

1. Initial TAB required at building substantial completion.
2. TAB required if any of the required subsequent FPT indicates any HVAC system underperformance.

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3. TAB required for all building systems in year three (3) of the post occupancy functional performance period.

**Question 20:** Appendix I requires functional performance test to determine actual kWh output of the on-site source. There is also reference to the bi-annual FPT and overall kWh performance. However, it is not clear how building energy consumption is to be measured and there is no protocol within industry accepted FPTs for measuring energy consumption. We recommend the appropriate method from the International Performance Measurement & Verification Protocol (IPMVP) be used as the methodology to calculate modeled savings and measure actual savings over the three year term in lieu of the FPT. Is this acceptable?

**Response:** Mr. Batson to help respond.

**Question 21:** The allowances seem excessive in some cases in low in other cases. Please consider revising the amounts as follows and clarifying what items go in what allowance so that other important project requirements don't have to be reduced or eliminated. For fire alarm, hardware, furniture and HVAC controls, please consider allowing design builders to work with your preferred vendors to obtain accurate pricing.

- o Middle School and Intermediate School Allowance suggestions:
  - Furniture in Question 14 above: \$2,150.00 - \$2,300.00 per student
  - Owner contingency - \$600,000.00
  - Technology allowance – (amount depends on what is included)
  - Equipment allowance – (amount depends on what is included)
- o Elementary School Allowance suggestions:
  - Furniture in Question 14 above: \$2,150.00 - \$2,300.00 per student
  - Owner contingency - \$500,000.00
  - Technology allowance – (amount depends on what is included)
  - Equipment allowance – (amount depends on what is included)

- a.) If HCS decides to keep the HVAC controls allowance in the contract, please clarify that the cost for factory mounted controls should be included in the HVAC allowance?
- b.) If HCS decides to keep the fire alarm allowance, please clarify if this amount includes the sprinkler system?

**Response:** There are no changes to allowances and contingencies at this time except to include an allowance for technology. See responses to questions 10 and 12. Regarding question 21, part a, any factory mounted controls are part of the HVAC mechanical equipment, and that cost is NOT included in the HVAC controls allowance. Regarding question 21, part b, the Fire Alarm System allowance is only for the fire alarm system, not the sprinkler system.

**Question 22:** The RFP states in section 3.1.3 and 3.1.4 that the "New Conceptual Designs" and the HCS "Educational Specifications are design requirements. The Conceptual Designs found on the website listed in Appendix C include only Sketchup models or CADD plans. The Educational Specification in Section 3, Design Process Guidelines, Item 2 outline many deliverables (such as Capacity Calculations, Narratives, program data matrix, etc.) that are not included in the Conceptual Design referenced in Appendix C. Is the Complete Conceptual Design submittal prepared by SHW in 2014 (and on the website at that time) a part of this RFP or only the Floor Plans and Sketchup models listed in Appendix C?

**Response:** HCS did not originally include the narratives in the original solicitation documents because of differing energy systems. They are now included as an attachment for your review. Please note, however, that the narratives no longer support the Design and Performance requirements specified in this RFP. (Documents to be provided as attachment or placed on Google Drive.)

**Question 23:** If the Conceptual Design Packages as prepared in 2014 by SHW (and as outlined in the Educational Specifications on pages 33-35 are not available, is a Program Data Matrix available for each school so that the Design Build Teams can verify the program requirements against the conceptual designs?

**Response:** See response to Question 22.

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- Question 24:** The building is defined sometimes as "Net Zero" and other times as "Net Positive". Please clarify the intention.
- Response:** All references in the solicitation documents are to be changed to "Energy Positive" which has been defined in Appendix E of the solicitation documents.
- Question 25:** Do we need to size and cost out the PV array?
- Response:** Yes.
- Question 26:** How important is economy of scale in this process – how likely are you to award all projects to the same Offeror? As the RFP is currently written, each project is a separate proposal and there is no ability to take advantage of the economies of scale of building multiple projects.
- Response:** HCS is actively studying how it can evaluate proposals where the proposers can offer enhancements to the scope and/or quality of the projects within their respective budgets, if the proposer is awarded multiple projects. HCS acknowledges that the opportunities for potential enhancements makes attractive the receipt and consideration of possible improvements to the projects' design obtainable only through multi-project awards. The method for offering, and the rules for evaluating, proposed enhancements through an "economy of scale" will be announced as soon as possible.
- Question 27:** Per the directions on the Functional Performance Testing in Appendix I, please define "underperformance".
- Response:** Underperformance is defined as: the system does not perform as represented in the proposal from the Offeror submitted in response to this solicitation.
- Question 28:** Is it acceptable to pull the Commissioning Agent costs into the Construction Budget, and self-perform the Commissioning?
- Response:** No.
- Question 29:** Is the 3-year Commissioning requirement for Functional Performance Testing part of the budgeted Commissioning cost line item in Appendix B, or is that cost a separate Operations & Maintenance cost for the Owner?
- Response:** It is included as part of the commissioning costs line item in Appendix B.
- Question 30:** There are directions within Article 4 that all documents are to be portrait orientation. We may provide some architectural drawings with landscape orientation. Please provide direction on whether this is acceptable.
- Response:** Landscape orientation is acceptable.
- Question 31:** Can the buildings be reoriented on site, and can fenestration be adjusted?
- Response:** Yes, the buildings can be reoriented on site. Fenestration can be adjusted in minor reasonable ways, but the intent of the Conceptual Design must be maintained.
- Question 32:** It is assumed that the conceptual plans are reflective of the quality and efficiency Horry County is seeking in the building designs. Would the School District like to offer additional comment relating to these considerations?
- Response:** No.
- Question 33:** The Ed Specs, in the paragraph describing Educational Space Types (as indicated in Section 2 and in images and photos on pages 10, 13, 15, 17, and 19 and elsewhere in this document) indicate considerable amounts of interior glazing between educational spaces and circulation spaces. The

use of glazing at these locations is also shown in the Sketchup models provided. Is this a design requirement?

**Response:** Yes. Refer to the response regarding fenestration in Question 31. Glazing can be adjusted in minor, reasonable ways, but the intent of the Conceptual Design must be maintained.

**Question 34:** Have all the sites indicated in Appendix F been through the approval process required by OSF?

**Response:** No site plans have been submitted to OSF.

**Question 35:** Some major mechanical systems are not currently able to be modeled and analyzed with the required software. In that case, how should design teams document their likely approach?

**Response:** All teams must utilize the modeling software prescribed in the RFP.

**Question 36:** Article 2.1 of the RFP states that the proposers must perform consistent with the "Technical Specifications of HCS. Article 3 of the RFP does not mention "Technical Specifications" as part of the design requirements. There do not appear to be any "Technical Specifications" on the HCS district-wide website. Are the "Technical Specifications" available and are they a part of the design requirements?

**Response:** Delete all references to "Technical Specifications" supplied by the Owner in the RFP documents.

**Question 37:** Is both Sefaira Architecture and Sefaira Systems analysis a requirement of our proposals?

**Response:** Yes. In order to obtain the proper output, both are required.

**HORRY COUNTY SCHOOLS**

**By:** *Darlyn B. Adams*

**Darlyn Adams, CPPO, CPPB  
Procurement Officer**

RFP # 1415-91  
Design-Build Delivery of New School Facilities  
PRICING FORM

PROPOSER NAME:

% HCS stated Owner Contingency	Points	CIRCLE ONE Elementary	CIRCLE ONE SMS	CIRCLE ONE CFMS	CIRCLE ONE SJIS	CIRCLE ONE MBMS	OPTIONAL: CIRCLE ONE COMBINED: CFMS, SJIS & MBMS	OPTIONAL: CIRCLE ONE COMBINED SMS, CFMS, SJIS & MBMS	OPTIONAL: CIRCLE ONE COMBINED ALL S PROJECTS
130%	20	\$1,300,000	\$1,625,000	\$1,950,000	\$1,950,000	\$1,950,000	\$5,850,000	\$7,475,000	\$8,775,000
127%	19	\$1,270,000	\$1,587,500	\$1,905,000	\$1,905,000	\$1,905,000	\$5,715,000	\$7,302,500	\$8,572,500
124%	18	\$1,240,000	\$1,550,000	\$1,860,000	\$1,860,000	\$1,860,000	\$5,580,000	\$7,130,000	\$8,370,000
121%	17	\$1,210,000	\$1,512,500	\$1,815,000	\$1,815,000	\$1,815,000	\$5,445,000	\$6,957,500	\$8,167,500
118%	16	\$1,180,000	\$1,475,000	\$1,770,000	\$1,770,000	\$1,770,000	\$5,310,000	\$6,785,000	\$7,965,000
115%	15	\$1,115,000	\$1,437,500	\$1,725,000	\$1,725,000	\$1,725,000	\$5,175,000	\$6,612,500	\$7,727,500
112%	14	\$1,112,000	\$1,400,000	\$1,680,000	\$1,680,000	\$1,680,000	\$5,040,000	\$6,440,000	\$7,552,000
109%	13	\$1,090,000	\$1,362,500	\$1,635,000	\$1,635,000	\$1,635,000	\$4,905,000	\$6,267,500	\$7,357,500
106%	12	\$1,060,000	\$1,325,000	\$1,590,000	\$1,590,000	\$1,590,000	\$4,770,000	\$6,095,000	\$7,155,000
103%	11	\$1,030,000	\$1,287,500	\$1,545,000	\$1,545,000	\$1,545,000	\$4,635,000	\$5,922,500	\$6,952,500
100%	10	\$1,000,000	\$1,250,000	\$1,500,000	\$1,500,000	\$1,500,000	\$4,500,000	\$5,750,000	\$6,750,000
97%	9	\$997,000	\$1,212,500	\$1,455,000	\$1,455,000	\$1,455,000	\$4,365,000	\$5,577,500	\$6,574,500
94%	8	\$994,000	\$1,175,000	\$1,410,000	\$1,410,000	\$1,410,000	\$4,230,000	\$5,405,000	\$6,399,000
91%	7	\$991,000	\$1,137,500	\$1,365,000	\$1,365,000	\$1,365,000	\$4,095,000	\$5,232,500	\$6,223,500
88%	6	\$888,000	\$1,100,000	\$1,320,000	\$1,320,000	\$1,320,000	\$3,960,000	\$5,060,000	\$5,948,000
85%	5	\$885,000	\$1,062,500	\$1,275,000	\$1,275,000	\$1,275,000	\$3,825,000	\$4,887,500	\$5,772,500
81%	4	\$881,000	\$1,012,500	\$1,215,000	\$1,215,000	\$1,215,000	\$3,645,000	\$4,657,500	\$5,538,500
78%	3	\$780,000	\$975,000	\$1,170,000	\$1,170,000	\$1,170,000	\$3,510,000	\$4,485,000	\$5,265,000
75%	2	\$750,000	\$937,500	\$1,125,000	\$1,125,000	\$1,125,000	\$3,375,000	\$4,312,500	\$5,062,500
71%	1	\$710,000	\$887,500	\$1,065,000	\$1,065,000	\$1,065,000	\$3,195,000	\$4,082,500	\$4,792,500
<71%	0								

INSTRUCTIONS

PRICING YOUR PROPOSALS. Rather than propose an amended total project budget, pricing should be offered as follows.

1. For each single school project, the proposer must identify on this form the amount of Owner Contingency proposed to be included in the budget. Increases in the Owner Contingency on the project result in higher points on the "budget" criteria.
2. To make a combination proposal, savings to the Owner from the "economy of scale" should be reflected in the combined Owner Contingency. Scores on all other Design Requirements factors will be carried over from the single-school designs as submitted.



June 24, 2015

### NOTICE TO POTENTIAL OFFERORS

The Horry County Board of Education (the District) is soliciting proposals from pre-qualified teams to perform Design-Build services for Carolina Forest, Myrtle Beach and Socastee Middle Schools, St. James Intermediate School, and Socastee Elementary School as High Performance – Energy Positive Schools. Sealed responses shall be received in accordance with the information provided in this Request for Proposals (RFP) instruction manual.

Proposals are due by 3:30pm in Room B300 on Thursday, August 27, 2015 at the Horry County Schools District Office located at 335 Four Mile Road, Conway, South Carolina 29526.

It is important that you follow the format for submission of your proposals exactly as requested in the RFP manual. This will help ensure that your package is considered responsive.

It is desired that the Offerors submit comments on how the Design Requirements could be clarified and/or improved upon by 12:00 pm EST on Friday, July 17, 2015. Any additional questions pertaining to this solicitation must be submitted no later than 12:00 pm EST on Monday, August 17, 2015. All questions are to be directed to the Buyer, Ara Heinz, via email at [AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net). The District will not respond to late questions submitted or verbal inquiries.

Please note that Horry County Schools and its facilities implement a revised work schedule during the summer. All facilities are closed on Fridays through August 7, 2015. We will resume a regular five-day work week beginning Monday, August 10, 2015.

HORRY COUNTY SCHOOLS

*Darlyn B. Adams DBA*

Darlyn B. Adams, CPPO, CPPB  
Procurement Officer

## REQUEST FOR PROPOSALS



The *Request for Proposals* with associated forms describe the solicitation process and the work to be performed and are published as an integral part of this *Request for Proposals* the same as if incorporated herein. Bid security and performance and payment bonds are required in accordance with the District's Procurement Code, as may be amended. Offeror, design professionals, contractors and subcontractors shall be licensed in accordance with State law and requirements of the Labor, Licensing, and Regulations Board of the State of South Carolina.

In accordance with the authority granted by the Horry County Schools' Procurement Code, any prospective Bidder, Offeror, Contractor, or Subcontractor, who feels aggrieved in connection with this solicitation, any addendum to the solicitation, or the subsequent award of a contract has a right to protest and present an appeal to the District within the time frame allowed from the date of issuance of this *Request for Proposals*, any addendum issued thereto, or the *Notice of Intended Award*, whichever is at issue. The protest shall be in accordance with the District's Procurement Code. Contact the District's Procurement Coordinator for details at 843-488-6942 or email [dadams@horrycountyschools.net](mailto:dadams@horrycountyschools.net).

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REQUEST FOR PROPOSALS / June 24, 2015

ADVERTISEMENT DATE:

PROJECT OWNER: Horry County Schools (the District)

SOLICITATION NUMBER: 1415-91

PROJECT NAME: Design-Build Delivery of New School Facilities

PROJECT LOCATION: Various locations within the Horry County School District

PROJECT DESCRIPTION: The District is soliciting proposals from pre-qualified firms to perform Design-Build services for Carolina Forest, Myrtle Beach and Socastee Middle Schools, St. James Intermediate School, and Socastee Elementary School as High Performance – Energy Positive Schools.

PERFORMANCE & PAYMENT BONDS: One Hundred Percent (100%) of contracted amount as stated on the *Notice of Intended Award*

SUBMIT PROPOSALS TO:

Horry County Schools, Office of Procurement Services

335 Four Mile Road, Rm B300

Conway, S.C. 29526

P.O. Box 260005

Conway, S.C. 29528-6005

(Or at the proposal closing location immediately prior to the proposal closing time. Offerors are cautioned not to be late.)

PROPOSAL DUE DATE/OPENING Thursday, August 27, 2015 at 3:30pm EST (Unless date and time are otherwise amended by addendum.)

DATE & TIME:

PROPOSALS CLOSING Horry County Schools

LOCATION: Conference Room B308

335 Four Mile Rd.

Conway, SC 29526 (Unless the location is otherwise amended by addendum.)

SOLICITATION CONDITIONS AND CONTRACT DOCUMENTS POSTED

District Website: <http://apps.hcs.k12.sc.us/apps/protrac/>

Other available web service: N/A

AT: Or by calling: N/A

ARCHITECT/ENGINEER: N/A

DISTRICT CONTACT PERSON:

Ara I. Heinz, Procurement Specialist

Phone: (843) 488-6930 Fax: (843) 488-6945 E-mail: [aheinz@horrycountyschools.net](mailto:aheinz@horrycountyschools.net)

DISTRICT PROCUREMENT OFFICER:

Darlyn Adams, CPPO/CPPB, at [dadams@horrycountyschools.net](mailto:dadams@horrycountyschools.net)

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## SUMMARY OF SERVICES REQUIRED



### Article 1 Introduction

- 1.1 Horry County Schools is one of the largest school systems in the State of South Carolina and is coterminous with Horry County's land area of approximately 1,152 square miles. The present boundaries of the District were established in 1952, a consolidation of all existing school Districts in the county.
- 1.2 The District is currently governed by a board, the Horry County Schools Board of Education, consisting of members elected in single-member Districts with the Board Chairman elected countywide. The Horry County Board of Education members have decision-making authority, the power to designate management, the ability to significantly influence operations, and have primary accountability for fiscal matters.
- 1.3 Currently, the District owns/operates fifty-six (56) facilities/properties which account for approximately 6,953,137 building square feet.
- 1.4 On February 16, 2013, a long-term facility plan was presented to the Board for their review. The purpose of the plan was to evaluate the adequacy of existing educational facilities, plan for future capital facilities spending, and address how the student population will be housed over the next 10 years. The document also provides for facility improvements or adjustments to the programmatic needs of the District. The District approved a capital projects plan on September 30, 2013, revised July 28, 2014, for the next eleven years (2013-14 to 2023-2024) which includes new construction as well as additions and renovations/modifications to existing facilities.
- 1.5 The Horry County Schools Board of Education voted and approved on November 12, 2014 "to proceed with new procurements for Carolina Forest, Myrtle Beach and Socastee Middle Schools, St. James Intermediate/Middle and Socastee Elementary School as High Performance – Energy Positive Schools." Subsequently, the Horry County Schools Board of Education determined that St. James will be an "intermediate" school with a capacity of 1200, but Socastee will be an 800 capacity "middle" school.

### Article 2 Nature of Services

- 2.1 This solicitation is for the purpose of contracting with a Design-Build firm, as the sole entity responsible for design and construction services, which will have a fiduciary role and responsibility to the District. Offerors must act in the best interests of the District, using their best efforts to perform each project in an expeditious and cost-effective manner consistent with the District's Design Requirements, including identified Educational Specifications, Technical Specifications, Conceptual Designs, and Approved Capital budget for both the design, construction, and delivery of the project. Any successful Offeror(s) will be under contract to provide both design and construction services, including initiation, planning, design, FF&E, and construction services necessary to deliver a completed facility to the District for occupancy. Any successful Offeror(s) shall hold all design professional, trade contractor, and trade supplier contracts. In addition, any successful Offeror(s) will be responsible for methods of construction and safety, as well as for developing an overall project schedule, which will be a contractual obligation including coordination of the work of all construction and miscellaneous contracts required for completion of the project within its predetermined budget and occupancy schedule.
- 2.2 Offers shall be considered only from Offerors previously identified by the RFQ for this solicitation (RFQ # 1415-64).
- 2.3 The District will procure the Independent Peer Review services so as to maintain uniformity in Independent Peer Review across all five projects.

**Article 3**  
**Scope of Work / Design Requirements**

- 3.1 The District intends to hire up to four (4) firms to provide Design-Build delivery of Carolina Forest, Myrtle Beach, and Socastee Middle Schools, St. James Intermediate School, and Socastee Elementary School as: High Performance – Energy Positive Schools. EACH OF THE FOLLOWING IS A DESIGN REQUIREMENT THAT MUST BE MET BY THE PROPOSER'S RESPONSE:
- 3.1.1 PROJECT-SPECIFIC SCHEDULE CONSTRAINTS ARE DESIGN REQUIREMENTS.  
(RFP Appendix A).
  - 3.1.2 PROJECT-SPECIFIC BUDGET CONSTRAINTS ARE DESIGN REQUIREMENTS.  
(RFP Appendix B).
  - 3.1.3 "NEW CONSTRUCTION CONCEPTUAL DESIGNS" ARE DESIGN REQUIREMENTS.  
(RFP Appendix C).
  - 3.1.4 HCS "EDUCATIONAL SPECIFICATIONS" ARE DESIGN REQUIREMENTS.  
(RFP Appendix D).
  - 3.1.5 "ENERGY-POSITIVE" REQUIREMENTS ARE DESIGN REQUIREMENTS.  
(RFP Appendix E).
  - 3.1.6 "HIGH-PERFORMANCE DESIGN" REQUIREMENTS ARE DESIGN REQUIREMENTS.  
(RFP Appendix E).
- 3.2 In addition to the Design Requirements, the following items are considered Basic Minimum Requirements of the proposal. Offerors are advised that failure to conform to and/or provide these documents (as/when needed), SHALL RENDER THE PROPOSAL NON-RESPONSIVE and eliminate it from further consideration.
- 3.2.1 THE EXISTING SITES ARE DESIGN CONSTRAINTS.  
(RFP Appendix F).
  - 3.2.2 COMPLIANCE WITH THE SOUTH CAROLINA SCHOOL FACILITIES PLANNING AND CONSTRUCTION GUIDE, INCLUDING REGULATORY REQUIREMENTS REFERENCED OR INCORPORATED THEREIN.  
(RFP Appendix G).
  - 3.2.3 It is a requirement that each Proposer have in place sufficient bonds, guarantees, irrevocable letters of credit, and/or other forms of security in favor of the District to establish responsibility in the procurement process, during the project, and during the warranty and initial operations periods.
  - 3.2.4 The HCS form of Design-Build Agreement is required.  
(RFP Appendix H).
  - 3.2.5 "POST-OCCUPANCY SERVICES" IS A BASIC MINIMUM AND PERFORMANCE REQUIREMENT.  
(RFP Appendix I).



- 3.3 Proposer(s) will be responsible during the execution of the services as the "Design-Builder", and shall adhere to the following criteria, including but not limited to:

3.3.1 The Design-Builder will be responsible for comprehending the District's design requirements, accurately translating those requirements into a Basis of Design, and incorporating all into complete construction documents. With these, the Design-Builder will deliver a finished facility conforming to the District design requirements. **Proposal development documents must be submitted sufficient to meet this definition: "drawings and other design-related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate ....." S.C. Code § 11-35-2910(14).**

3.3.2 The Design-Builder also will have the following duties and responsibilities:

- The Design-Builder will be responsible for a period of systems optimization and commissioning support, shall achieve an energy-positive state of performance during this period, and provide an energy performance guarantee as part of the design-build agreement.
- Independent Peer Review – An independent peer review will be performed by a consultant. The District is responsible for the cost of independent peer review, but the Design-Builder is responsible for all coordination with peer review consultant.
- The Design-Builder will employ the designer of record (DOR) for all regulatory purposes.
- The Design-Builder's services shall conform to recognized standards of professional practice. The contract will outline the scope of work. The work shall include a Design Development phase and a Construction Phase.
- During the Design Development Phase, the Design-Builder will take full professional responsibility, through its Designer of Record, to create construction documents that satisfy the District's design requirements. To the extent professionally responsible, the Design-Builder will overlap the Design Development and Construction Phases when components are conducive to early construction starts.
- Design-Builder will be responsible for the following things, in accordance with the Contract:
  - Adhering to all of the requirements established by Office of School Facilities including coordination of design reviews and approvals, special inspectors and occupancy inspections. (Special inspectors will be hired by the District directly and will coordinate with the Design-Builder.)
  - Methods of construction
  - Safety programs
  - General conditions
  - Securing all required local, state and federal permits and approvals
  - Prequalification of potential subcontractors
  - Procurement of all work
  - Certification of work-in-place
  - Monthly payment requests
  - Coordination and scheduling of all work of all construction contracts and miscellaneous contracts required for the completion of the project within the predetermined budget and schedule
  - Coordination with the District and District's contractors to ensure proper design and installation of all necessary low-voltage wiring systems for technology and HVAC controls. Provide, manage, and install all low-voltage conduits.
  - Provide and install all FF&E according to the allowance (See Appendix B).
  - Post-Occupancy services as stated in Appendix I.

- 3.4 It is the responsibility of each Offeror to examine the entire solicitation and review its response for accuracy before submitting their proposal(s). Once submission deadlines have passed, all responses will be final. The District may request clarification from any individual respondent relative to their response, and reserves the right to ask for additional information from all parties that have responded.

#### **Article 4** **Evaluation Criteria**

- 4.1 Upon receipt of all offers by the opening date and time specified in the RFP, the Office of Procurement Services shall review all offers for responsiveness to the solicitation documents. The District reserves the right to consider any offer as non-responsive based solely on its judgment that the offer does not satisfactorily meet the criteria of this solicitation or the District's Procurement Code. Those offers found to be responsive shall be evaluated based on the evaluation criteria.
- 4.2 During the evaluation, the District Selection Committee shall read, review, and evaluate the offers based on the following criteria (S.C Code Ann. §11-35-3024(3)). (Offeror qualifications and financial capacity were determined through the RFQ, and all offerors have been deemed to satisfy these requirements.)

NOTE: Proposals will be evaluated project-by-project. Propose only a SINGLE COMPLETE in-itself design solution which the offeror believes best implements the project requirements. The evaluation committee will not choose from alternates or options necessary to achieve a complete design solution.

The purpose of the pre-proposal comment period is to ensure understanding of the design requirements so that Offerors can propose a complete design solution for the project.

#### **POINTS**

- |           |   |
|-----------|---|
| 20 points | Project Schedule Compliance (see § 3.1.1)                   |
| 20 points | Project Budget Compliance (see § 3.1.2)                     |
| 15 points | HCS Conceptual Design Implementation (see § 3.1.3)          |
| 15 points | HCS Educational Specifications Implementation (see § 3.1.4) |
| 15 points | "Energy Positive" Implementation (see § 3.1.5)              |
| 15 points | "High Performance Design" Implementation (see § 3.1.6)      |
- 4.3 Interviews will be used to clarify the offer. Participating in an interview does not guarantee a contract award.
- 4.4 The Selection Committee will determine Intended Awards and forward them to the Superintendent for presentation to the Board for confirmation.

#### **Article 5** **Selection and Invitation**

- 5.1 Notices of Intended Awards shall be posted to the District's website at: <http://apps.hcs.k12.sc.us/apps/protrac/>. Per section 4.4 above, the Intended Awards will be submitted to the Board for confirmation.

- 5.2 A proposer aggrieved because of this solicitation, any addendum thereto, or subsequent award of contracts has a right to protest and to present an appeal in accordance with the District's Procurement Code, which can be viewed on the District's website at [http://www.horrycountyschools.net/departments/fiscal\\_services/procurement/](http://www.horrycountyschools.net/departments/fiscal_services/procurement/).
- 5.3 The invitation is subject to the provision of the District's Procurement Code and any applicable laws of the State of South Carolina. Any contract entered into as a result of this solicitation shall be governed by the laws of the State of South Carolina.

## DEFINITIONS



Following are definitions of terms used in the *Proposal Instructions*. These definitions are not entire, plenary, or exhaustive of all terms used. Terms may be defined where used, in the District's Procurement Code, or may be subject to normal and usual interpretation in the context used.

1. **Addenda:** Written or graphic instruments issued by the District prior to the RFP submittal date and time which modify or interpret the RFP instruction manual, postpone the RFP submittal date and time or withdraw the RFP. Only those additions, deletions, corrections or clarifications in writing in the addenda are contractually binding.
2. **Architect/Engineer:** Any individual or entity legally qualified to practice architecture or engineering in South Carolina with whom the District has a contractual agreement to provide services pertaining to construction that members of this profession or those in their employ may justifiably perform. Any reference to Architect/Engineer also includes any representatives, agents or employees of the Architect/Engineer.
3. **Board:** The Horry County Schools Board of Education
4. **Building Commissioning:** A formal and systematic process of documentation, adjustment, testing, verification, and training, focused on quality assurance and performed specifically to ensure that the finished facility operates in accordance with the District's documented design requirements and the construction documents.
5. **Buyer:** Designee of the District Procurement Coordinator assigned to officiate the solicitation process for construction work or other related services.
6. **Change Order:** Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties of the contract.
7. **Commissioning Provider:** The entity or person providing building commissioning services for a project.
8. **Construction Documents:** Documents that fully illustrate all aspects of the project, including but not limited to, drawings and specifications coordinated with HCS' Educational Specifications and other Design Requirements. They shall include all standard plan details for all disciplines (including all notes, legends, and symbols completed for all disciplines) and final technical specifications.
9. **Contract Agreement:** The written and executed *Contract Agreement* between the District and the Vendor for purposes of performing the work identified in the Contract Documents at the agreed upon contract price during the agreed upon contract time. The executed *Contract Agreement* supersedes any prior negotiations, representations, or agreements, whether written or oral, unless incorporated in the *Contract Agreement* by reference to supplementary documents, or through execution of a *Change Order*. The contract between the District and the Contractor is not to be construed as an agreement between the District and any subcontractor, material or equipment supplier, or any other individuals or entities enjoined to the Contractor for purposes of contract execution.
10. **Contract Documents:** Documents including all terms and conditions and forms contained in the Contract Documents as originally published as well as any published bid addenda, any referenced drawings and specifications related to the project and integral to the performance of the work, and any *Change Order* (or directive) executed after contract execution.
11. **Debarred:** The disqualification of an individual or entity from bidding on or being awarded a contract by the State of South Carolina or any other governmental entity for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance. Any individual or entity debarred by the State of South Carolina or other governmental entity is ineligible to bid on or accept any contracts with the District under the debarred name or any other name.
12. **Design-Build:** A project delivery method in which the governmental body enters into a single contract for design and construction of an infrastructure facility. S.C. Code § 11-35-2910(7).
13. **Design Development Documents:** Drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical, civil, and electrical systems, materials, landscape architecture, interior design, and other such elements as may be appropriate and necessary.
14. **Design Professional and Designer of Record:** See definition for Architect/Engineer.
15. **Design requirements:** The written description of the infrastructure facility(e.g., schools) to be procured ... including: (a) required features, functions, characteristics, qualities, and properties that are required by the District; (b) the anticipated schedule, including start, duration, and completion; and (c) estimated budgets as applicable to the specific procurement, for design, construction, operation, and maintenance. The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project. S.C. Code § 11-35-2910(10).
16. **Design services:** Architect-engineer, construction management, or land surveying services as defined in Section 11-35-2910.
17. **District:** Horry County Schools as represented by its Board of Education, Superintendent, management staff, procurement officials, employees, or other authorized representatives or agents. Designated representatives who are not employed by the District or who do not serve on the Horry County Schools Board of Education may be any individual or firm who, through a contractual agreement, are designated to serve in an official capacity on behalf of the District.
18. **Entity:** Any business, corporation, partnership, sole proprietorship, joint stock company, joint venture, or any other legally formed organization.

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19. **Equipment:** The hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the operation and maintenance of the equipment being acquired. The terms "Product" and "System" are used interchangeable with the term "Equipment".
20. **Independent Peer Review:** The function of confirming that the key elements of the professional engineering and architectural design provided by the design-builder conform to the applicable standard of care. S.C. Code § 11-35-2910(11).
21. **Informality or Irregularity:** A solicitation requirement not fully complied with by the Offeror, waived by the District or allowed to be corrected when it is merely a matter of form or an immaterial variation from the exact requirements of the *Proposal Instructions* having no effect or negligible effect on total bid price, quality, quantity or delivery of supplies or performance of the contract and for which the waiver or correction would not be prejudicial to the relative standing of the other bidders.
22. **May:** The word "may" or other such words or phrases used anywhere in the Contract Documents indicates a request or recommendation that is adhered to by the Offeror at his/her choice whether in the negative or the affirmative.
23. **Minority or Woman Owned Business:** Means a small business concern that is at least fifty-one percent (51%) unconditionally owned by one or more individuals who are both socially and economically disadvantaged or are women or a publicly owned business having at least fifty-one percent (51%) of its stock unconditionally owned by one or more socially and economically disadvantaged individuals or by women.
24. **Notice of Intended Award:** A written notice of the District's acceptance of an Offeror's proposal and the intention for invitation to the Request of Proposal. The *Notice of Intended Award* is emailed to all bidders and posted at <http://apps.hcs.k12.sc.us/apps/protrac/>. The *Notice of Intended Award* is not an authorization for commencement of work but only serves as a notice of the District's intention to enter into a contract. Such *Notice of Intended Award* may be cancelled.
25. **Offer:** The bid, or proposal submitted in response to this solicitation. The terms "Bid" and "Proposal" are used interchangeably with the term "Offer".
26. **Offeror:** The single legal entity submitting the offer. The term "Bidder" is used interchangeably with the term "Offeror".
27. **Official Submission Form:** A form furnished by the District to be completed and signed by an authorized representative of the proposing entity and submitted by the proposal opening date and time, which constitutes the Bidder's offer to furnish all materials and labor to accomplish the work at the offered prices in the time frame established by the District.
28. **Owner:** The District
29. **Principal:** Officers, directors, owners, partners, and individuals having primary management or supervisory responsibilities within a business entity, including project directors, financial officers or other such key personnel.
30. **Project:** The total scope of work to be performed as provided in the Contract Documents whether performed by one or more contractors, subcontractors or the District itself. (Also referred to as the "work," the "work to be performed" or other such terms.)
31. **Proposal Development Documents:** The drawings and other design-related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method. S.C. Code § 11-35-2910(14), including civil engineering design.
32. **Proposal Instructions:** A set of instructions, contract documents, forms and other such data intended to describe the services to be performed and the conditions under which a response is to be submitted and a contract awarded. A corresponding name and RFP number identifies the RFP instruction manual.
33. **Representative:** An authorized designee of an individual or entity with formal responsibilities as specified by contract or employment agreement.
34. **RFP (Request for Qualifications):** The announcement soliciting responses from individuals or firms on the basis of demonstrated competence and qualification for the particular type of services required.
35. **Shall:** The word "shall" or "must" or other such words or phrases used anywhere in the Contract Documents indicates a mandate that must be adhered to by the Offeror, Contractor, Architect/Engineer or District, whether in the negative or the affirmative.
36. **Software:** All related materials and documentation whether in machine readable or printable form.
37. **Solicitation:** This document, including all its parts, attachments and any Addenda.
38. **Subcontractor:** An individual or entity, who is properly licensed to do business in the State of South Carolina, having a direct contract with the Contractor to perform a portion of the work described in the Contract Documents. Any reference to subcontractor also includes any representatives, agents, or employees of the subcontractor or any other entity enjoined to the subcontractor to perform any work in relation to the project.
39. **Submittal and Public Opening Date and Time:** The date and time established in the RFP or subsequent addenda for receipt of sealed responses.
40. **Suspension:** Disqualification of an entity to submit a bid or receive an award of a contract from the State of South Carolina or other governmental entity for a designated period of time pending the completion of an investigation and any legal proceedings that may ensue because the entity is suspected, upon probable cause, of engaging in criminal, fraudulent, seriously improper conduct or the failure or inadequacy of performance.

41. Taxpayer Identification Number (TIN): Means the number required by the Internal Revenue Service to be used by the Bidder or Contractor in reporting income tax and other returns. (A Federal Identification Number or Social Security Number.)

*End of Definitions*

## PROPOSAL INSTRUCTIONS



1. **Offeror Representations:** By signing and submitting a proposal, the proposing company's (the Offeror's) Principal represents he/she has read and understands these *Proposal Instructions* as well as the work to be performed and the conditions under which the Offeror shall perform the work and the proposal is made in accordance therewith. The Offeror's principal certifies the proposal submitted is based upon the services required and/or the materials, equipment and systems specified in the Contract Documents, as amended by any addendum, and incorporates all costs necessary for the successful completion of the work to be performed in the stipulated time.
2. **Disclosure of Conflicts of Interests or Unfair Competitive Advantage:** You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract(s) and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. Without limitation, an unfair competitive advantage exists where a contractor competing for award possesses either proprietary information that was obtained from a District official without proper authorization or source selection information (as defined in Regulation 19-445.2010(C)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract. If you have an unfair competitive advantage or conflict of interest, the District may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered.
3. **Offeror Licensing:** The Offeror's principal represents the Offeror has met (or will meet no later than the legally required time) the licensing requirements for the State of South Carolina, is not debarred or suspended by any governmental entity or the State of South Carolina, and is eligible to submit a proposal/bid to and perform consultant work for Horry County Schools ("the District"). The Offeror further represents all subconsultants/subcontractors stated on the *Official Submission Form* or subsequently enlisted to perform a portion of the work outlined also meet all licensing requirements of the State of South Carolina as may be required, and are not debarred or suspended from submitting a bid or performing construction services for any governmental entity or the State of South Carolina. Offerors and their subconsultants/subcontractors are advised the District shall report Contractor Licensing Law violations to the S.C. Contractors' Licensing and Regulations Board.
4. **Proposal Documents:** Any potential Offeror is solely responsible for obtaining a complete set of solicitation Documents (*Proposal Instructions*, addenda and forms) as issued by the District, which are an integral part of the solicitation process, from the posted source(s) as directed in the *Request for Proposals*. Any information on District solicitations obtained from any other source is unofficial and any reliance placed on such information is at the offeror's sole risk and is without recourse under the Horry County School Procurement Code and the South Carolina Consolidated Procurement Code. The availability of these documents does not confer a license or grant permission for any other use of any portion of the solicitation Documents.
5. **Pre-Existing Site Conditions:** Before submitting a proposal, the Offeror shall carefully review all documents and examine the worksite in conjunction therewith to ascertain site conditions affecting the performance of the work. If the Offeror receives a contract award but failed to make such examinations, the Offeror shall in no way be relieved of the obligation to comply in every detail with all provisions and requirements of the Contract Documents without additional compensation or time.
6. **Addenda:** Addenda shall be issued prior to the proposal opening date and time for the purposes of modifying or interpreting the Contract Documents through additions, deletions, clarifications or corrections. No addendum shall be issued later than four (4) days prior to the proposal opening date except to a) withdraw the *Request for Proposals*, or b) to postpone the proposal opening date and time. When an addendum is issued for the purposes of postponing the proposal opening date and time, the addendum shall establish the new proposal opening date and time no earlier than five (5) days after the addendum issue date. Addenda shall be posted on the on-line bidding source(s) stated in the *Request for Proposals*. An Offeror shall acknowledge receipt of all addenda issued by identifying the addendum number and the date of issuance with the Offeror's initials in the spaces provided on the *Official Submission Form* or the proposal shall be found non-responsive in accordance with the District's Procurement Code.
7. **Authorization of Offeror:** The legal name of the Offeror and the signature of the Offeror's Principal shall be affixed on the *Official Submission Form* and other documents requiring signature as part of the proposal submission along with required notarizations. A proposal submitted by an agent shall have a current written power of attorney attached certifying the agent's authority to bind the Offeror. Unsigned submission forms shall render the proposal non-responsive in accordance with the District's Procurement Code.
8. **Official Submission Form:** To assist in the comparison of responses submitted, all proposals shall be submitted with the District's *Official Submission Form* or an identical copy and in the format requested in the *Official Submission Form* or the proposal may be considered non-responsive and, therefore, not considered. To ensure a proposal is considered responsive, a) all blanks or information requested shall be completed in ink or by typewriter or computer, b) all blanks or information requested on the official submission form shall be completed in full or have inserted in the blank the words "N/A" (not applicable) or "none" or other such designation, c) formatting of responses as requested in the *Official Submission Form* shall be adhered to; d) all issued addenda shall be acknowledged; and e) all insertions, alterations and/or erasures shall be initialed by an official representative of the Offeror. Any modification to the requirements of the Contract Documents or any other Offeror conditions may render the proposal non-responsive in accordance with the District's Procurement Code.
9. **Submitting Confidential Information:** Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure; however the Offeror must invoke this protection by doing so in writing. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information. Marking the entire response or substantial portions of the response as proprietary shall not be honored by the District and may result in the response being found non-responsive, and therefore, not considered. By submitting a response, Offeror agrees to defend, indemnify and hold harmless the District, its officers and employees, from every claim, demand, loss, expense cost, damage or inquiry, including attorney's fees, arising out of or resulting from the District withholding information that Offeror marked as "confidential" or "trade secret" or "Protected".
10. **Subconsultant/Subcontractor Disclosure:** The successful Offeror will be the primary point of contact with regard to all stipulations, including payment of all fees and the meeting of all requirements of the *Request for Proposals* and the subsequent contract. Where Offerors do not have the in-house expertise or manpower to provide all the services requested, subcontracting may be permitted, with full disclosure in the response and approval of the District. Any Offeror, whose response includes subconsultants/subcontractors, is required to act as the primary administrative contact for services to be performed by those subcontractors and must assume full responsibility for the risk/liability, delivery and quality of such services performed. The District shall have the right to request removal and/or replacement of any subconsultants/subcontractor that cannot perform to the District's standards.
11. **Use of Minority and Economically Disadvantaged Vendors:** The District encourages the Offeror's use of minority-owned and women-owned businesses provided they meet all the requirements of the *Proposal Instructions*, as applicable.
12. **Receipt of Proposals:** Proposal packages shall be received at the location stated in the *Request for Proposals* no later than the date and time published in the *Request for Proposals*, as they may be amended by any addendum. Timely submission of a fully completed proposal package is solely the responsibility of the Offeror. It is the Offeror's responsibility to synchronize submission time with the District's official bid clock at the bid opening location to avoid late submissions.
13. **Ownership of Materials:** All materials submitted in response to the *Request for Proposals* shall become the property of the District. The original response submitted shall be retained for the official files, and it along with the redacted copy shall become a public record after award and shall be open to public inspection upon request under the Freedom of Information Act. All other copies of the response submitted may be destroyed after an award is made.

**14. Certification of Independent Price Determination:** GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.

- (a) By submitting an offer, the offeror certifies that—
1. The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—
    - (i) Those prices;
    - (ii) The intention to submit an offer; or
    - (iii) The methods or factors used to calculate the prices offered.
  2. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
  3. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory—
1. Is the person in the offeror's organization responsible for determining the prices being offered in this offer, and that the signatory has not participated and will not participate in any action contrary to paragraphs a.1 through a.3 of this certification; or
  2.
    - (i) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs a.1 through a.3 of this certification [As used in this subdivision b.2.i, the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid];
    - (ii) As an authorized agent, does certify that the principals referenced in subdivision b.2.i of this certification have not participated, and will not participate, in any action contrary to paragraphs a.1 through a.3 of this certification; and
    - (iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs a.1 through a.3 of this certification.
  3. If the offeror deletes or modifies paragraph a.2 of this certification, the bidder must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**15. Certification Regarding Debarment and Other Responsibility Matters:**

- (a) By submitting an Offer, Offeror certifies to the best of its knowledge and belief, that—
1. Offeror and/or any of its Principals—
    - (i) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
    - (ii) Have not, within a three-year period preceding this bid, been convicted of or had a civil judgement rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of bids; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
    - (iii) Are not presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of the offenses enumerated in paragraph a.1.(ii) of this provision.
  2. Offeror has not, within a three-year period preceding this bid, had one or more contracts terminated for default by any public (Federal, state, or local) entity.
- (b) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of subsidiary, division, or business segment, and similar positions).
- (c) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (d) If Offeror is unable to certify the representations stated in paragraphs a.1., Offeror must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.
- (e) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph 1 of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (f) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the District, the Procurement Officer may terminate the contract resulting from the solicitation for default.

**16. Ethics Certificate:** By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The District may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the time the law requires the statement to be filed.

**17. Restrictions Applicable to Offerors & Gifts:** Violation of these restrictions may result in disqualification of your bid, suspension or debarment, and may constitute a violation of the state Ethics Act.

- (a) After issuance of the solicitation, offeror agrees not to discuss this procurement activity in any way with the Owner or its employees, agents, or officials. All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed.
- (b) Unless otherwise approved in writing by the Procurement Officer, offeror agrees not to give anything to the Owner, any affiliated organizations, or the employees, agents or officials of either, prior to award.
- (c) Offeror acknowledges that the policy of the State is that a governmental body should not accept or solicit a gift, directly or indirectly, from a donor if the governmental body has reason to believe the donor has or is seeking to obtain contractual or other business or financial relationships with the governmental body. Regulation 19-445.2165(C) broadly defines the term donor.

**18. Nonresident Taxpayer Registration Affidavit Income Tax Withholding (Important Tax Notice – Nonresidents Only):**

- (a) Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the non-resident.
- (b) The withholding requirement does not apply to:
  1. payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina,
  2. nonresidents who are not conducting business in South Carolina,
  3. nonresidents for contracts that do not exceed \$10,000 in a calendar year, or
  4. payments to nonresidents who



- (i) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and
- (ii) submits a Nonresident Taxpayer Registration Affidavit – Income Tax Withholding, Form I-312 to the person letting the contract.
- (c) For information about other withholding requirements, (e.g. employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: [www.sctax.org](http://www.sctax.org)
- (d) This notice is for informational purposes only. This Owner does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, SC 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898-5383.
- (e) PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT: <http://www.sctax.org/forms/withholding/i-312-form>

19. **Discussions & Negotiations:** Submit your best terms from a cost or price and from a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright. Nevertheless, the District may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. If improper revisions are submitted, the District may elect to consider only your unrevised initial proposal. [11-35-1530(6); R.19-445.2095(l)] The District may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). If negotiations are conducted, the District may elect to disregard the negotiations and accept your original proposal.

20. **Iran Divestment Act – Certification:** (a) The Iran Divestment Act List is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-iran-divestment.phtml> (.). Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By signing your Offer, you certify that, as of the date you sign, you are not on the then-current version of the Iran Divestment Act List. (c) You must notify the Procurement Officer immediately if, at any time before posting of a final statement of award, you are added to the Iran Divestment Act List.

21. **Proposal Acceptance Period:** Any proposal submitted in response to this *Request for Proposals* constitutes a firm commitment for a period of one hundred twenty (120) days following the proposal opening date and time.

22. **Withdrawal or Modification of a Proposal:** A response shall not be modified, withdrawn or cancelled by the Offeror during the one hundred twenty (120) calendar days immediately following the public opening date and time as stated in the *Request for Qualifications* or any subsequent addenda as may be provided for in the District's Procurement Code. Any District request for clarification or additional information regarding a response shall not be considered as authorization to amend any portion of the initial response. Prior to the public opening date and time, a proposal may be modified or withdrawn by notice to the District's Buyer listed in the *Request for Qualifications*. Such notice shall be in writing with the signature of the Offeror that signed the original response and shall be mailed, hand delivered, or sent via express carrier in a sealed envelope to arrive no later than the submittal and public opening date and time.

23. **Right of Waiver:** In accordance with the District's Procurement Code, the District reserves the right to a) waive minor informalities or irregularities; b) reject any and all responses or any portions thereof; c) accept firm proposals from the top rated Offerors to the RFP in such number as the District may determine and select such proposal that the District deems is in the best interests of the District; d) reject any and all proposals offered or any portions thereof; or e) other such rights as provided in the District's Procurement Code or this RFP.

24. **Non-Collusion Clause:** By submitting a signed proposal, the Offeror certifies that he/she nor the firm represented nor any other employee or representative of the firm has divulged to, discussed with, nor compared the response submitted with any other Offeror or potential Offeror and has not colluded with any other parties including the District or School Board to this competitive *Request for Proposals*. The Offeror further certifies that he/she is not party to any collusive action or any action which may be in violation of any federal or state antitrust act, nor has the Offeror offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer, or subcontractor in connection with the proposal to be offered to the District. Any and all proposals shall be rejected if there is any reason for believing collusion exists among the Offerors which may be a violation of Federal or State antitrust acts. The District may or may not, at its discretion, accept future proposals/bids for similar work from Offerors suspected of collusion.

25. **Proposal Expenses:** All costs associated with a) attendance at any pre-proposal conference(s) or other proposal meetings including pre-award interviews, b) worksite observations, c) preparation and presentation of a proposal, d) supplying any documentation required by the District for purposes of determining Offeror responsibility or in relation to any protest or appeal, or e) any other costs incurred is solely the responsibility of the Offeror.

End of Proposal Instructions

## PROPOSAL SPECIAL INSTRUCTIONS



1. **Interpretations and Clarifications:** Requests for additional information or questions regarding error, omission or clarification of any portion of the Solicitation Documents or the Contract Documents, shall be submitted in writing to the District Contact Person stated in the *Request for Qualifications* by e-mail or facsimile no later than ten (10) days prior to the proposal opening date and time as may be amended. Any interpretations, corrections, or changes to the Solicitation Documents or the Contract Documents made in any other manner than by a written addendum shall not be binding, and Offerors shall not rely upon them. See also, "10. Design Requirements Review and Comment Period" in this section below.
2. **Communication with District Officials:** Potential and actual Offerors (including any subcontractors or sub-consultants) shall NOT contact members of the School Board or the District Review Committee at any time during the submission, evaluation, and/or selection process with the purpose of influencing the outcome of the competition. All communication concerning the solicitation shall proceed through the Horry County Schools Office of Procurement Services.
3. **Number of Copies & Response Format:** One (1) original, one (1) copy, and one (1) electronic copy. Bulky, ornate, and/or costly binding of the original response is not necessary or required. The original copy shall be so marked as "Original". Use 8 1/2" x 11" narratives describing architectural materials/engineering systems and, at a minimum, the Site Plan, Architectural Floor Plan(s), and a 3-D representation (mass model) of the proposed design on ANSI C size paper. The narratives shall be provided in the current Construction Specifications Institute (CSI) format by Divisions and shall contain sufficient description and product name/type to identify the quality of the proposed construction. A table of contents, with corresponding tabs in the body of the response, must be included as well to identify each section. Placing multiple tabs on a single page is perfectly acceptable. If more than one item in the table of contents can be started on the same page, you may do so and place all corresponding tabs on that page. To avoid unnecessary length, internal cross-references are encouraged where any particular information requested is adequately presented elsewhere in the response package. Any affidavits, certifications, or signed statements called for may be included in an appendix and will not count toward the page limit. Responses shall be portrait orientation. Also note the requirements for submitting an electronic model that can be analyzed under the "High Performance / Energy Positive" software requirements of this RFP.
4. **Magnetic Media – Required Format:** As noted above in Item # 3, an original hard copy of your offer must be accompanied by the specified number of copies in the following electronic format: thumb drive, compact disc (CD) in one of the following formats, CD-R, DVD-ROM; DVD-R; or DVD+R. Formats such as CD-RW, DVD-RAM, DVD-RW, DVD+RW, or DVIX are not acceptable. Every CD/thumb drive must be labeled with Offeror's name, solicitation number, and specify whether contents contain the business proposal or cost proposal. If multiple thumb drives/CD sets are provided, each thumb drive/CD in the set must be appropriately identified as to its relationship to the set, e.g., 1 of 2. Each thumb drive/CD must be identical to the original hard copy. File formats shall be MS Word 97 or later, PDF and *Sefaira*-readable as appropriate.
5. **Submitting Redacted Offers:** You are required to mark the original copy of your offer to identify any information that is exempt from public disclosure. You must do so in accordance with the Item entitled "Submitting Confidential Information". In addition, you must also submit one complete copy of your offer from which you have removed any information that you marked as exempt (trade secret or proprietary information), i.e. a redacted copy. The information redacted should mirror in every detail the information marked as exempt from public disclosure. The redacted copy should a) reflect the same pagination as the original; b) show the empty space from which information was redacted; and c) be submitted on magnetic media. (See Item entitled "Magnetic Media – Required Format".) Except for the redacted information, the CD or thumb drive must be identical to the original hard copy. Portable Document Format (.pdf) is preferred.
6. **Proposal Submission:** Proposals delivered orally or via telephone, telegraph, e-mail, facsimile, or other such methods are not sealed proposals and are unacceptable. Proposals submitted in any other way than as required in these *Proposal Instructions* shall be considered non-responsive in accordance with the District's Procurement Code. In addition, proposals shall be submitted in the English language and in U.S. dollars, unless otherwise permitted by the solicitation.
7. **Sealed Proposal Packaging:** The documents required for proposal submission shall be enclosed in a sealed, opaque envelope before delivery, mailing, or insertion into any express carrier envelope or packaging. The exterior of the sealed, opaque envelope shall be clearly marked with a) the solicitation name and project/solicitation number, b) the Offeror's name and address, and c) the words "SEALED QUALIFICATIONS" in bold print. The Offeror shall assume full responsibility for the correct packaging and identification of the sealed proposal to prevent exposure of proposal pricing prior to the official proposal opening date and time. Any pre-mature opening of a proposal shall be handled in accordance with the District's Procurement Code.
8. **Discussion with Responsive Offerors for Clarification:** During the review process, the District shall have the right to request from the Offeror any other information or evidence it deems necessary for evaluation of the proposals and relevant to the any one or more of the evaluation factors. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. The failure of any Offeror to promptly provide such requested information shall be sufficient grounds for determining the Offeror to be non-responsive and for rejection of the proposal.
9. **Protest Procedure:** Any Offeror or potential Offeror who feels he/she has been aggrieved in connection with this solicitation, an addendum to the solicitation, or the subsequent award of a contract has a right to protest and to present an appeal, in writing, in accordance with the District's Procurement Code to the District's Procurement Coordinator within the required number of days from the date of the solicitation, an addendum or the award, whichever is at issue. A copy of the Procurement Code can be found on the District's website at [http://www.horrycountyschools.net/pages/Horry County Schools/3352373296737269426/Fiscal Service/Procurement](http://www.horrycountyschools.net/pages/Horry%20County%20Schools/3352373296737269426/Fiscal%20Service/Procurement).
10. **Design Requirements Review and Comment Period:** HCS strongly encourages each proposer to spend the first twenty-one (21) days of the RFP period studying the HCS Design Requirements and submitting comments on how the Design Requirements could be clarified and/or improved upon. Also, HCS seeks the opinion of proposers on whether or not it is feasible to meet all Design Requirements, including schedule, budget, high performance, and energy positive requirements. If it becomes necessary to prioritize the HCS requirements or make "trade offs" this should be done during the RFP period, so that Design Requirements can be adjusted equally for all competitors. Proposers should not submit proposals that are not feasible under the Design Requirements, nor should proposers undertake unauthorized subordination of one Design Requirement to another. HCS very much desires to have thorough, considered comments on these matters by JULY 17, 2015. ALL COMMENTS WILL BE HANDLED AS REQUESTS FOR "INTERPRETATIONS AND CLARIFICATIONS" AND MAY BE ADDRESSED BY HCS THROUGH ADDENDA.

End of Proposal Special Instructions

## INFORMATION FOR OFFERORS TO SUBMIT



The Offeror shall prepare a response to all of the following questions and shall submit one (1) original, one (1) copy, and one (1) electronic copy to Horry County Schools as stated in the Special Instructions.

### SECTION 1: Signatory/Information

The package shall begin with a one-page cover letter, briefly identifying the offering firm and stating that the Principal submitting the offer and signing the *Official Submission Form* has the authority to bind the Offeror in a contract.

The *Official Submission Form* shall follow the cover letter and all questions shall be answered and addenda acknowledged.

### SECTION 2: Executive Summary - Narrative and Visual

Describe the proposer's end product and how it meets or exceeds the design requirements. Include simple visual representations of aesthetics, massing, site orientation, site components, façade elevations, and functioning of key systems. Provide references to where each component or issue is addressed in detail in the remainder of the proposal. (30 pages maximum).

### SECTION 3. PROPOSAL DEVELOPMENT DOCUMENTS (No maximum).

Proposal development documents must be submitted sufficient to meet this definition: "drawings and other design-related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate ...." S.C. Code § 11-35-2910(14). These documents must be of suitable quality and completion to be subject, together with the technical information supplied under Section 4, to meaningful professional peer review for conformity with the Design Requirements.

### SECTION 4: Technical Reports Required by Design Criteria (No Maximum).

Provide a descriptive narrative, with supporting information, data analysis, product literature, and other analytics or data regarding each Design Requirement (including but not limited to specific reports or data that may be required in the RFP to support that design requirement), to confirm and demonstrate the proposal's conformity with:

- a. Project SCHEDULE CONSTRAINT
- b. Project BUDGET CONSTRAINT
- c. HCS "NEW CONSTRUCTION CONCEPTUAL DESIGNS"
- d. HCS "EDUCATIONAL SPECIFICATIONS"
- e. HCS "ENERGY-POSITIVE" requirements
- f. HCS "HIGH-PERFORMANCE DESIGN" requirements
- g. SITE CONDITIONS and SITE CONSTRAINTS
- h. "SOUTH CAROLINA SCHOOL FACILITIES PLANNING AND CONSTRUCTION GUIDE" INCLUDING REGULATORY REQUIREMENTS REFERENCED OR INCORPORATED THEREIN
- i. Proposer's bonds, guarantees, irrevocable letters of credit, and/or other forms of security in favor of the District to establish responsibility in the procurement process, during the project, and during the warranty and initial operations periods.
- j. The Design-Build Agreement.
- k. "POST-OCCUPANCY SERVICES"

### SECTION 5: High Performance Design Narrative: (10 pages maximum).

In this section, the Proposer may further comment upon the value brought to the project by the Proposal's approach and/or expected results as to energy conservation, environment, safety, security, durability, accessibility, cost-benefit, productivity, sustainability, functionality, and operational considerations.

### SECTION 6: Energy Positive Design Narrative: (10 pages maximum).

Discuss the proposer's onsite renewable energy solutions, their cost-effectiveness, practicability, flexibility for future conditions, durability, operating costs vs. operating gains, and aesthetics

End of Information for Offerors to Submit

## OFFICIAL SUBMISSION FORM(S)



RFP Number: 1415-91

Project Name/Identification: Design-Build Delivery of New School Facilities: New Socastee Elementary School

Date of Offer: Federal Identification Number:

Offeror Firm/Provider Name:

Offeror Mailing/Street Address:

Offeror City/State/Zip:

Telephone Number: Fax Number:

Website Address:

Contractor's License Number:

Name/Title of Principal:

Signature of Principal:

Telephone Number: Fax Number:

Principal's Email Address:

☐ Yes

Is the Principal on this cover sheet legally authorized to bind the Offeror? ☐ No

Addenda Acknowledgement: (Acknowledgement of all addenda issued is required.)

<u>Addenda No.</u>	<u>Addenda Date</u>	<u>Offeror's Initials</u>

**PROPOSAL CERTIFICATION:** I, the undersigned, certify that I am an authorized signatory for the proposing team identified in this proposal form with authority to submit proposals and obligate the team to a contract for the work identified in the solicitation and associated Contract Documents provided by Horry County Schools. I have read and fully understand the solicitation and associated Contract Documents such that I have full knowledge of all of the work to be performed and the terms, conditions, and requirements the team I represent must comply with if a contract is awarded. I further understand that the proposing team I represent must comply with all applicable local, state and federal laws related to the work to be performed and to the payment of subconsultants and subcontractors. I certify that the information included on this form or as attached supplementary information is true and accurate to the best of my knowledge, understanding, and belief. I understand that misrepresentation of any information on this form shall result in the bid being considered non-responsive.

<b>OFFEROR:</b>	<b>DATE:</b>
Name & Title of Authorized Signatory:	
Signature:	

**OFFICIAL SUBMISSION FORM(S)**



RFP Number: 1415-91

Project Name/Identification: Design-Build Delivery of New School Facilities: New Carolina Forest Middle School

Date of Offer: \_\_\_\_\_ Federal Identification Number: \_\_\_\_\_

Offeror Firm/Provider Name: \_\_\_\_\_

Offeror Mailing/Street Address: \_\_\_\_\_

Offeror City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Website Address: \_\_\_\_\_

Contractor's License Number: \_\_\_\_\_

Name/Title of Principal: \_\_\_\_\_

Signature of Principal: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Principal's Email Address: \_\_\_\_\_

☐ Yes

Is the Principal on this cover sheet legally authorized to bind the Offeror? ☐ No

Addenda Acknowledgement: (Acknowledgement of all addenda issued is required.)

<u>Addenda No.</u>	<u>Addenda Date</u>	<u>Offeror's Initials</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**PROPOSAL CERTIFICATION:** I, the undersigned, certify that I am an authorized signatory for the proposing team identified in this proposal form with authority to submit proposals and obligate the team to a contract for the work identified in the solicitation and associated Contract Documents provided by Horry County Schools. I have read and fully understand the solicitation and associated Contract Documents such that I have full knowledge of all of the work to be performed and the terms, conditions, and requirements the team I represent must comply with if a contract is awarded. I further understand that the proposing team I represent must comply with all applicable local, state and federal laws related to the work to be performed and to the payment of subconsultants and subcontractors. I certify that the information included on this form or as attached supplementary information is true and accurate to the best of my knowledge, understanding, and belief. I understand that misrepresentation of any information on this form shall result in the bid being considered non-responsive.

<b>OFFEROR:</b>	<b>DATE:</b>
Name & Title of Authorized Signatory:	
Signature:	

**OFFICIAL SUBMISSION FORM(S)**



RFP Number: 1415-91

Project Name/Identification: Design-Build Delivery of New School Facilities: New St. James Intermediate School

Date of Offer: \_\_\_\_\_ Federal Identification Number: \_\_\_\_\_

Offeror Firm/Provider Name: \_\_\_\_\_

Offeror Mailing/Street Address: \_\_\_\_\_

Offeror City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Website Address: \_\_\_\_\_

Contractor's License Number: \_\_\_\_\_

Name/Title of Principal: \_\_\_\_\_

Signature of Principal: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Principal's Email Address: \_\_\_\_\_

☐ Yes

Is the Principal on this cover sheet legally authorized to bind the Offeror?

☐ No

Addenda Acknowledgement: (Acknowledgement of all addenda issued is required.)

<u>Addenda No.</u>	<u>Addenda Date</u>	<u>Offeror's Initials</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



**PROPOSAL CERTIFICATION:** I, the undersigned, certify that I am an authorized signatory for the proposing team identified in this proposal form with authority to submit proposals and obligate the team to a contract for the work identified in the solicitation and associated Contract Documents provided by Horry County Schools. I have read and fully understand the solicitation and associated Contract Documents such that I have full knowledge of all of the work to be performed and the terms, conditions, and requirements the team I represent must comply with if a contract is awarded. I further understand that the proposing team I represent must comply with all applicable local, state and federal laws related to the work to be performed and to the payment of subconsultants and subcontractors. I certify that the information included on this form or as attached supplementary information is true and accurate to the best of my knowledge, understanding, and belief. I understand that misrepresentation of any information on this form shall result in the bid being considered non-responsive.

<b>OFFEROR:</b>	<b>DATE:</b>
Name & Title of Authorized Signatory:	
Signature:	

**OFFICIAL SUBMISSION FORM(S)**



RFP Number: 1415-91

Project Name/Identification: Design-Build Delivery of New School Facilities: New Socastee Middle School

Date of Offer: \_\_\_\_\_ Federal Identification Number: \_\_\_\_\_

Offeror Firm/Provider Name: \_\_\_\_\_

Offeror Mailing/Street Address: \_\_\_\_\_

Offeror City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Website Address: \_\_\_\_\_

Contractor's License Number: \_\_\_\_\_

Name/Title of Principal: \_\_\_\_\_

Signature of Principal: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Principal's Email Address: \_\_\_\_\_

☐ Yes

Is the Principal on this cover sheet legally authorized to bind the Offeror? ☐ No

Addenda Acknowledgement: (Acknowledgement of all addenda issued is required.)

<u>Addenda No.</u>	<u>Addenda Date</u>	<u>Offeror's Initials</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**PROPOSAL CERTIFICATION:** I, the undersigned, certify that I am an authorized signatory for the proposing team identified in this proposal form with authority to submit proposals and obligate the team to a contract for the work identified in the solicitation and associated Contract Documents provided by Horry County Schools. I have read and fully understand the solicitation and associated Contract Documents such that I have full knowledge of all of the work to be performed and the terms, conditions, and requirements the team I represent must comply with if a contract is awarded. I further understand that the proposing team I represent must comply with all applicable local, state and federal laws related to the work to be performed and to the payment of subconsultants and subcontractors. I certify that the information included on this form or as attached supplementary information is true and accurate to the best of my knowledge, understanding, and belief. I understand that misrepresentation of any information on this form shall result in the bid being considered non-responsive.

<b>OFFEROR:</b>	<b>DATE:</b>
Name & Title of Authorized Signatory:	
Signature:	

OFFICIAL SUBMISSION FORM(S)



RFP Number: 1415-91

Project Name/Identification: Design-Build Delivery of New School Facilities: New Myrtle Beach Middle School

Date of Offer: Federal Identification Number:

Offeror Firm/Provider Name:

Offeror Mailing/Street Address:

Offeror City/State/Zip:

Telephone Number: Fax Number:

Website Address:

Contractor's License Number:

Name/Title of Principal:

Signature of Principal:

Telephone Number: Fax Number:

Principal's Email Address:

☐ Yes

Is the Principal on this cover sheet legally authorized to bind the Offeror? ☐ No

Addenda Acknowledgement: (Acknowledgement of all addenda issued is required.)

<u>Addenda No.</u>	<u>Addenda Date</u>	<u>Offeror's Initials</u>

**PROPOSAL CERTIFICATION:** I, the undersigned, certify that I am an authorized signatory for the proposing team identified in this proposal form with authority to submit proposals and obligate the team to a contract for the work identified in the solicitation and associated Contract Documents provided by Horry County Schools. I have read and fully understand the solicitation and associated Contract Documents such that I have full knowledge of all of the work to be performed and the terms, conditions, and requirements the team I represent must comply with if a contract is awarded. I further understand that the proposing team I represent must comply with all applicable local, state and federal laws related to the work to be performed and to the payment of subconsultants and subcontractors. I certify that the information included on this form or as attached supplementary information is true and accurate to the best of my knowledge, understanding, and belief. I understand that misrepresentation of any information on this form shall result in the bid being considered non-responsive.

<b>OFFEROR:</b>	<b>DATE:</b>
Name & Title of Authorized Signatory:	
Signature:	

## APPENDIX A: PROJECT-SPECIFIC SCHEDULE REQUIREMENTS



### Information Pertaining to All Five Projects:

SUBSTANTIAL COMPLETION: All five (5) projects must be operational for the start of the August 2017-2018 school year. This effectively equates to Substantial Completion on or before May 1, 2017 to allow for proper punchlist corrections and staff move-in / setup.

*End of Project-Specific Requirements*

## APPENDIX B: PROJECT-SPECIFIC BUDGET CONSTRAINTS



The following budgets have been approved by the Board of Education for the Design-Build Delivery of the five schools:

School	Total Project Approved Budget	Current Available Budget *
New Socastee Elementary School	\$26.00M	\$25.90M
New Carolina Forest Middle School	\$36.75M	\$36.61M
New St. James Intermediate School	\$36.75M	\$36.61M
New Socastee Middle School	\$31.10M	\$30.98M
New Myrtle Beach Middle School	\$36.75M	\$36.61M

\* Current Available Budgets includes Owner's allowances as follows:

Elementary School Allowances	
Description	Amount
Furniture	\$1,000,000
Hardware	\$ 250,000 (Materials only)
HVAC Controls	\$ 500,000
Fire Alarm System	\$ 600,000
Playgrounds	\$ 350,000 (Equipment and mulch only)
Special Inspections	\$ 150,000
Commissioning	\$ 100,000
Owner Contingency	\$1,000,000

Middle/Intermediate Schools (PER SCHOOL)	
Description	Amount
Furniture	\$1,500,000 (except Socastee Middle = \$1,250,000)
Hardware	\$ 350,000 (Materials only)
HVAC Controls	\$ 650,000
Fire Alarm System	\$ 750,000
Playground	\$ 150,000 (Intermediate school only)
Special Inspections	\$ 150,000
Commissioning	\$ 125,000
Owner Contingency	\$1,500,000 (except Socastee Middle = \$1,250,000)

Total Project Approved Budgets include the following: design, construction, furniture, fixtures, and equipment. The Current Available Budget represents the Total Project Approved Budget less expenditures for the conceptual design studies. It is anticipated that in addition to the Owner's allowances as stated above, fees for land surveying and geotechnical studies for the sites (which are in the process of being procured) will also come from the Current Available Budgets. Estimates for the land surveying and geotechnical studies are \$15K - \$20K per site.

*End of Project-Specific Budget Constraints*

**APPENDIX C:  
NEW CONSTRUCTION CONCEPTUAL DESIGNS**



Links to the New Construction Conceptual Designs for the three types of schools to be delivered can be found at the following web address: [http://www.horrycountyschools.net/pages/Horry\\_County\\_Schools/3352373296737269426/Support\\_Services/Facilities\\_III/New\\_Construction\\_Conceptual\\_De](http://www.horrycountyschools.net/pages/Horry_County_Schools/3352373296737269426/Support_Services/Facilities_III/New_Construction_Conceptual_De).

Technical (AutoCAD and SketchUp) files for the elementary school and each middle/intermediate schools will be made available through Google Drive. All proposers must provide the Procurement Specialist with a gmail address to gain viewing access to all of the files.

*End of New Construction Conceptual Designs*



**APPENDIX D:  
HORRY COUNTY SCHOOLS EDUCATIONAL  
SPECIFICATIONS**



The Horry County Schools Education Specifications can be found at the following web address: [http://www.horrycountyschools.net/pages/Horry\\_County\\_Schools/3352373296737269426/Support\\_Services/Facilities\\_III/Educational\\_Specifications](http://www.horrycountyschools.net/pages/Horry_County_Schools/3352373296737269426/Support_Services/Facilities_III/Educational_Specifications).

*End of Horry County Schools Educational Specifications*

## APPENDIX E: ENERGY POSITIVE / HIGH PERFORMANCE DESIGN REQUIREMENTS



### ENERGY POSITIVE / HIGH PERFORMANCE DELIVERABLES

As provided in the RFQ, the following two definitions apply to this competition:

- "Energy Positive" means the total amount of energy used by the building on an annual basis is less than the amount of renewable energy created on the site. (As measured in standard methods of measuring the project's energy production / consumption; not measured in financial cost of that energy).
- "High Performance" means a building that integrates and optimizes on a life cycle basis all major high performance attributes, including energy conservation, environment, safety, security, durability, accessibility, cost-benefit, productivity, sustainability, functionality, and operational considerations.

To provide a common standard for evaluating design requirement compliance and value added by the proposer's solutions, each respondent shall supply HCS (as part of its Proposal Development Documents) a single "clone" of the proposed design that has been created within the *Sefaira Architecture* and *Sefaira Systems* software packages. The *Sefaira* software accepts both SketchUp and Revit modeling data. The published results of each Proposing Team shall be in a uniform format as created by the *Sefaira* software for ease in comparison by the evaluation committee. (*Sefaira* is providing a 20% discount to the Design-Build teams on the annual subscription for the software. The names of all pre-qualified teams have been provided to *Sefaira*.)

Specific energy and sustainability modeling requirements in the "Ed Specs" are superseded by the *Sefaira* requirement. Proposers may use any method or tool they choose for their own work to create their proposal, but all proposals must be submitted with the capacity to be analyzed in the *Sefaira* software environment.

The "benchmark" from which the performance of your proposed design will be analyzed by the HCS using *Sefaira* is: ASHRAE/USGBC/IES Standard 189.1-2009 and ASHRAE 62.1.

Loads and other data points should be based upon:

1. posted capacity of each school, operating normal HCS school hours on the HCS normal school calendar, under the program for the school and the "Horry County Schools Educational Specifications: A Guide to the Planning and Design of Educational Facilities" (October 21, 2013) ("Ed Specs").
2. Conditions and regulatory constraints of the site.
3. Fidelity to functional adjacencies established in the conceptual plan and "Ed Specs".

*End of Energy-Positive/High-Performance Design Requirements*

# APPENDIX F - PROPERTY ACQUISITION STATUS

DATE (as of)	PROPERTY	GRADE LEVELS	TMS #	ACRES	CLOSED?	PRELIMINARY WETLANDS	FINAL WETLAND ID LETTER	DEED	PLAT	PHASE 1 ENVIRONMENTAL	PHASE 2 ENVIRONMENTAL	DETAILED SURVEY & TOPO	WITHIN THE FORMER CONWAY BOMBING RANGE?	ORDNANCE DETECTION AND REMOVAL ACTIVITIES COMPLETE?	GEOTECHNICAL REPORT
6/1/2015	NEW Socastee Elementary Site	CD - 5	179-00-06-132 & 179-00-06-029 & 179-00-06-130 & 179-00-06-131 & 179-00-06-018	20	YES	YES	IN PROGRESS**	YES	YES	YES	YES	NO	n/a	n/a	NO****
6/1/2015	NEW Carolina Forest Middle School Site	6 - 8	164-00-01-023	30	YES	YES	IN PROGRESS**	YES	YES	YES	n/a	NO	YES	YES	NO****
6/1/2015	NEW St. James Intermediate School Site	5 - 6	180-00-03-261	20	YES	IN PROGRESS	NO**	YES	YES	n/a	n/a	NO	n/a	n/a	NO****
6/1/2015	NEW Socastee Middle School Site	6 - 8	PENDING	PENDING	PENDING	PENDING	PENDING	PENDING	PENDING	PENDING	PENDING	PENDING	PENDING	PENDING	PENDING
6/1/2015	NEW Myrtle Beach Middle School Site	6 - 8	173-16-02-013 & 173-00-04-029	15	YES	IN PROGRESS	NO**	NO	YES***	n/a	n/a	NO	n/a	n/a	NO****

\* Acquisition of the site is pending.

\*\* Unknown when USACDE will provide final JO letter

\*\*\*Due to the age of these original plats, and the fact that the site is actually 2 parcels, a full boundary survey and combination plat is needed.

\*\*\*\*No Geotechnical Reports are available at this time. However, this work is to begin soon, and the studies will be made available as soon as possible.

**APPENDIX G:  
SC SCHOOL FACILITIES PLANNING AND  
CONSTRUCTION GUIDE**



The South Carolina Office of School Facilities 2014 Planning and Construction Guide can be found at the following web address: <https://ed.sc.gov/agency/os/school-facilities/>.

*End of SC School Facilities Planning and Construction Guide*

## APPENDIX H: DESIGN-BUILD CONTRACT



Horry County Schools is proposing the following Design-Build Contract with attachments (to be located on the Google Drive):

- A. AIA 141 Standard Form of Agreement Between Owner and Design-Builder
- B. AIA 141 2014 Exhibit A – Design-Build Amendment
- C. AIA 141 2014 Exhibit B – Insurance and Bonds
- D. AIA 141 2014 Exhibit C – Sustainable Projects
- E. AIA E203 2013 – Building Information Modeling and Digital Data Exhibit

*End of Design-Build Contract*

## APPENDIX I: POST OCCUPANCY FUNCTIONAL PERFORMANCE TESTING SERVICES



### 1. HVAC

The HVAC system design criteria and performance characteristics provided by the Design-Builder are terms of the Design-Build Agreement and shall not to be modified except by Change Order. The HVAC system operation shall be evaluated against the design criteria during the Functional Performance Testing and shall include the following operational data as a minimum: indoor space temperatures, indoor relative humidity, uniformity of temperature and relative humidity, maximum air velocity and sound characteristics within the occupied areas, outdoor air ventilation quantity and conditions, air changes per hour within the occupied spaces, indoor space pressure relative to adjacent spaces, overall building pressure, building energy consumption and EUI (energy use intensity), automatic temperature control system functionality, and any fume hood exhaust / ventilation operation. Design-Builder shall provide training to the Owner's O&M staff to ensure proper building systems operation while also providing building operational control to the Owner's staff.

Commencing with the Design-Builder's statement to the Owner that the building is substantially complete, Test and Balance (TAB) and HVAC Functional Performance Testing (FPT) shall be performed. The Design-Builder is responsible for TAB and certification of the results to the Owner. For FPT, equipment operation will be conducted by the Design-Builder, but the responsibility for directing, witnessing, and documenting the tests rests with the commissioning authority provided by the owner. All HVAC underperformance, measured against the Design-Builder's representations to the Owner in the Proposal Development Documents, will be corrected at the Design-Builder's expense within thirty (30) days. A follow-up FPT will be conducted at the end of the 30-day period. If the follow-up FPT shows continued underperformance, the 30 day cycle will be repeated and the Design-Builder will reimburse the Owner for the commissioning authority's fees for that FPT.

TAB and FPT will also occur each June and December in like manner, until a period of three (3) years has passed since the initial fully successful FPT. Equipment operation will be conducted by the Design-Builder, but the responsibility for directing, witnessing, and documenting the tests rests with the commissioning authority. All HVAC underperformance, measured against the Design-Builder's representations to the Owner in the Proposal Development Documents, will be corrected at the Design-Builder's expense within forty-five (45) days. A follow-up FPT will be conducted at the end of the 45-day period. If the follow-up FPT shows continued underperformance, the 45 day cycle will be repeated and the Design-Builder will reimburse the Owner for the commissioning authority's fees for that FPT.

On a least an annual basis, and at additional times the Design-Builder deems prudent for supporting the FPT requirements of the Design-Builder, for the three (3) school years following the initial school term of occupancy, the Design-Builder will conduct training of the Owner's O&M staff prior to the commencement of the Fall term of school.

### 2. RENEWABLE ON-SITE ENERGY SOURCES

These unit of energy performance representations of the Design-Builder are terms of the Design-Build Agreement, not to be modified except by Change Order: Kilowatt-hour (kWh) with agreed acceptable tolerances for variable conditions of production.

Commencing with the Design-Builder's statement to the Owner that the building is substantially complete, Functional Performance Testing (FPT) shall be performed to determine actual kWh output of the on-site source. For FPT, equipment operation will be conducted by the Design-Builder, but the responsibility for directing, witnessing, and documents the tests rests with the commissioning authority. All kWh underperformance, measured against the Design-Builder's representations to the Owner in the Proposal Development Documents, will be corrected at the Design-Builder's expense within thirty (30) days. A follow-up FPT will be conducted at the end of the 30-day period. If the follow-up FPT shows continued underperformance, the 30 day cycle will be repeated and the Design-Builder will reimburse the Owner for the commissioning authority's fees for that FPT.

FPT will also occur each June and December in like manner, until a period of three (3) years has passed since the initial fully successful FPT. All kWh underperformance, measured against the Design-Builder's representations to the Owner in the Proposal Development Documents, will be corrected at the Design-Builder's expense within forty-five (45) days. A follow-up FPT will be conducted at the end of the 45-day period. If the follow-up FPT shows continued underperformance, the 45 day cycle will be repeated and the Design-Builder will reimburse the Owner for the commissioning authority's fees for that FPT.

*End of Post Occupancy Functional Performance Testing Services*

**Question 20:** Appendix I requires functional performance test to determine actual kWh output of the on-site source. There is also reference to the bi-annual FPT and overall kWh performance. However, it is not clear how building energy consumption is to be measured and there is no protocol within industry accepted FPTs for measuring energy consumption. We recommend the appropriate method from the International Performance Measurement & Verification Protocol (IPMVP) be used as the methodology to calculate modeled savings and measure actual savings over the three year term in lieu of the FPT. Is this acceptable?

**Response:** International Performance Measurement & Verification Protocol (IPMVP) as the methodology to calculate modeled savings is acceptable. Section 3.4.4.1 (**Option D: Types of Simulation Programs**) in the IPMVP report (<http://www.nrel.gov/docs/fy02osti/31505.pdf>) specifically states that ASHRAE's simplified energy analysis procedure (i.e., The Radiant Time Series (RTS) Methodology, from the ASHRAE Handbook of Fundamentals Chapter 17 & 18) may be used. This is also the methodology that Sefaira Architecture utilizes. Similarly, if a detailed hourly analysis tools such as EnergyPlus is used, that is acceptable since the Sefaira Systems generates Energyplus input files as part of the analysis.

**3.4.4.1  
Option D: Types  
of Simulation  
Programs**

Information on the different types of building simulation models can be found in the ASHRAE Handbook (1997). DOE also maintains a current list of public domain and proprietary building energy simulation programs. This information can be obtained by accessing DOE's information server at [www.eren.doe.gov/buildings/tools\\_directory](http://www.eren.doe.gov/buildings/tools_directory).

Whole building simulation programs usually involve hourly calculation techniques. However techniques using ASHRAE's simplified energy analysis procedure may also be used if the building heat losses/gains, internal loads and HVAC systems are simple. ASHRAE's procedure features modified bin methods and simplified HVAC system models.

Many other types of special purpose programs may be used to simulate energy use and operating conditions of individual components or industrial processes. HVAC component models are available from ASHRAE in its HVAC02 toolkit (Brandemuehl 1993), and for boiler/chiller equipment in the HVAC01 toolkit (Bourdouxhe 1994a, 1994b, 1995). Simplified component air-side HVAC models are also available in a report by Knebel (1983). Equations for numerous other models have been identified as well (ASHRAE 1989, SEL 1996).

Any software used must be well documented and well understood by the user.

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Any software used must be well documented and well understood by the user.





**AIA®**

# Document A295™ – 2008

## General Conditions of the Contract for Integrated Project Delivery

for the following PROJECT:

*(Name and location or address)*

| Elementary School #8.

### THE OWNER:

*(Name, legal status and address)*

| School District No. 2 of Spartanburg County, South Carolina

### THE ARCHITECT:

*(Name, legal status and address)*

| Jumper Carter Sease Architects P.A.

| 412 Meeting St

| West Columbia, SC 29169-7533

### THE CONTRACTOR:

*(Name, legal status and address)*

| Thompson Turner Construction, a division of Thompson Construction Group, Inc.

| 100 N. Main

| Sumter, SC 29150

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes:

(811227755)

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 PURPOSE

The Owner, Architect and Contractor have agreed to plan, design, and construct the Project in a collaborative environment following the principles of Integrated Project Delivery and to utilize Building Information Modeling to maximize the use of their knowledge, skills, and services for the benefit of the Project. The Architect and Contractor will deliver the Project in the following phases, which may overlap: Conceptualization, Criteria Design, Detailed Design, Implementation Documents, Construction and Closeout.

### § 1.2 INITIAL INFORMATION

The Owner, Architect and Contractor may rely on the Initial Information. Each, however, recognizes that such information may materially change and, in that event, the parties shall agree upon appropriate adjustments to the Architect's and Contractor's services and compensation, and the schedule. The Initial Information is as follows: *(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

#### § 1.2.1 The Owner's program for the Project:

*(Identify documentation or state the manner in which the program will be developed.)*

The program will be developed based upon the most cost-effective solution to satisfy the priorities of the Owner within the available resources and schedule.

#### § 1.2.2 The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

Site to be acquired.

#### § 1.2.3 The Owner's Budget for the Work:

*(Provide total and, if known, a line item breakdown.)*

#### § 1.2.4 The Owner's anticipated design and construction schedule:

##### .1 Design phase milestone dates, if any:

to be determined

##### .2 Commencement of construction:

to be determined

##### .3 Substantial Completion date or milestone dates:

to be determined

##### .4 Other:

N/A

#### § 1.2.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction are set forth below:

*(List number and type of procurement packages.)*

To be determined during preconstruction phase consultations.

#### § 1.2.6 Other Project information:

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*(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)*

N/A

§ 1.2.7 The Owner identifies the following representative in accordance with Section 2.1.1:

*(List name, address and other information.)*

Don Icenhower

§ 1.2.8 The persons or entities, in addition to the Owner's representative, who are required to review submittals to the Owner are as follows:

*(List name, address and other information.)*

§ 1.2.9 The Owner will retain the following consultants and Contractors:

*(List name, legal status, address and other information.)*

.1 Geotechnical Engineer:

to be determined

.2 Other, if any:

none

§ 1.2.10 The Architect identifies the following representative in accordance with Section 3.1.1:

*(List name, address and other information.)*

Todd Sease, AIA, Principal in Charge

§ 1.2.11 The Architect will retain the following consultants:

*(List name, legal status, address and other information.)*

.1 Structural Engineer:

to be determined

.2 Mechanical Engineer:

to be determined

.3 Electrical Engineer:

to be determined

.4 Other, if any:

Kitchen: to be determined

Civil: to be determined

§ 1.2.12 The Contractor identifies the following representative in accordance with Section 4.1.1:

*(List name, address and other information.)*

Principal in Charge = to be determined

Project Manager = to be determined

Site Superintendant = to be determined

§ 1.2.13 The Contractor will retain the following consultants and Subcontractors to assist the Contractor in its performance of the Pre-GMP Services:

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*(List name, address and other information.)*

| To be determined.

§ 1.2.14 Other Initial Information:

| N/A

§ 1.3 BASIC DEFINITIONS

§ 1.3.1 THE WORK

The term "Work" means the construction and services required of the Contractor by the Guaranteed Maximum Price Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

§ 1.3.2 THE PROJECT

The Project consists of the whole of the Architect's Services and the Work as that term is defined in Section 1.3.1 above and the professional services related thereto.

§ 1.3.3 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Guaranteed Maximum Price Documents showing the design, location and dimensions of the Work, generally including Models, plans, elevations, sections, details, schedules and diagrams.

§ 1.3.4 THE SPECIFICATIONS

The Specifications are that portion of the Guaranteed Maximum Price Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.3.5 BUILDING INFORMATION MODEL

The Building Information Model (Model(s)), is a digital representation of the physical and functional characteristics of the Project. The term "Model" may be used to describe a single model or multiple models used in the aggregate. "Building Information Modeling" (BIM) means the process and technology used to create the Model.

§ 1.3.6 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work provided by the Architect, the Architect's consultants, the Contractor, Subcontractors, or Sub-subcontractors under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, Models, sketches, drawings, specifications, and other similar materials.

§ 1.3.7 THE GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price represents an amount that the Contract Sum shall not exceed as agreed to by the Owner and Contractor.

§ 1.3.8 THE GUARANTEED MAXIMUM PRICE DOCUMENTS

The Guaranteed Maximum Price Documents (GMP Documents) consist of the agreement between the Owner and Contractor (Owner-Contractor Agreement), General, Supplementary and other Conditions of the Contract (Conditions of the Contract), Drawings, Specifications, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

§ 1.3.9 THE CONTRACT

The GMP Documents comprise the Contract for Integrated Project Delivery. The Contract represents the entire and integrated agreement between the Owner and the Contractor and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The GMP Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than

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the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.3.10 THE IMPLEMENTATION DOCUMENTS**

The Implementation Documents consist of the Architect and Contractor's further development of the GMP Documents as necessary to construct the Project.

#### **§ 1.3.11 OWNER'S BUDGET FOR THE WORK**

The Owner's Budget for the Work is the amount the Owner has budgeted to construct all elements of the Project designed or specified by the Architect and includes contractors' general conditions costs, overhead and profit. The Owner's Budget for the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

#### **§ 1.3.12 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Owner-Contractor Agreement to render initial decisions on Claims in accordance with Section 13.2 and certify termination of the Owner-Contractor Agreement under Section 7.2.2 of the Owner-Contractor Agreement, A195-2008, Standard Form of Agreement Between Owner and Contractor for Integrated Project Delivery.

#### **§ 1.3.13 INTEGRATED PROJECT DELIVERY**

Integrated Project Delivery is a project delivery approach that integrates people, systems, business structures and practices into a process that collaboratively harnesses the talents and insights of all participants to reduce waste and optimize efficiency through all phases of design, fabrication and construction.

#### **§ 1.4 CORRELATION AND INTENT OF THE GMP DOCUMENTS**

**§ 1.4.1** The intent of the GMP Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The GMP Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the GMP Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 1.4.2** Neither organization of the Specifications into divisions, sections and articles, arrangement of Drawings, organization of the Model, or the issuance of separate Models shall control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.4.3** Unless otherwise stated in the GMP Documents, words that have well-known technical or construction industry meanings are used in the GMP Documents in accordance with such recognized meanings.

#### **§ 1.4.4 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

#### **§ 1.4.5 INTERPRETATION**

In the interest of brevity, words such as "all" and "any" and articles such as "the" and "an" may be omitted, but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

#### **§ 1.5 USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

The Architect, Architect's consultants, Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized, solely and exclusively for use in completion of the Project, to use and reproduce the Instruments of Service provided to them. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Architect, Architect's consultants, Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use another author's Instruments of Service on other projects without the specific written consent of the Owner and the author of the Instruments of Service.

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§ 1.5.1 The Architect and Contractor shall utilize a Model as Instruments of Service to the greatest extent practicable and pursuant to Section 1.5.2. Unless the parties mutually agree otherwise, the Architect shall be responsible for the integration and coordination of the Model throughout the design and construction of the Project.

#### § 1.5.2 SOFTWARE AND DATA EXCHANGE PROTOCOLS

The Owner, Architect and Contractor shall, at the earliest practical moment, meet and delineate the types of software to be used on the Project and establish protocols, standards and tolerances as may be required for the proper execution of the Work. The Owner, Architect and Contractor shall work together to establish the permitted uses for all digital information, including the Model, to be exchanged on the Project. Such determinations shall be set forth in AIA Document E201™-2007, or a similar document, that shall be incorporated by reference into all agreements for services or construction for the Project.

#### § 1.6 COORDINATION

The Owner, Architect and Contractor shall coordinate the services provided by one another's consultants, subconsultants, contractors and Subcontractors. Upon request, the Owner, Architect and Contractor shall furnish copies of the scopes of services in the services contracts they hold. The Owner shall require that its consultants and contractors maintain professional liability insurance and other liability insurance, as appropriate to the services provided.

### ARTICLE 2 OWNER

#### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in this document and is referred to as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish information or services required of the Owner by the GMP Documents in a timely manner. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Architect and Contractor's performance with reasonable promptness after receiving the written request for such information or services.

§ 2.1.3 The Architect and Contractor shall be entitled to rely on the accuracy and completeness of information furnished by the Owner.

§ 2.1.4 The Owner shall provide prompt written notice to the Architect and Contractor if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Instruments of Service.

§ 2.1.5 The Owner shall furnish to the Architect and Contractor, within fifteen days after receipt of a written request, information necessary and relevant to give notice of, project commencement.

#### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall provide information regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

§ 2.2.2 Prior to the establishment of the Guaranteed Maximum Price, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the GMP Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor and Architect.

§ 2.2.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the Budget for the Work; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If

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the Owner significantly increases or decreases the Owner's Budget for the Work, the Owner shall notify the Architect and Contractor. The Owner and the Architect and Contractor shall thereafter agree to a corresponding change in the Owner's Budget for the Work or in the Project's scope and quality.

§ 2.2.4 Except for permits and fees that are the responsibility of the Contractor under the GMP Documents, including those required under Section 9.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 2.2.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 2.2.7 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 2.2.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### ARTICLE 3 ARCHITECT

#### § 3.1 GENERAL

§ 3.1.1 The Architect is the person or entity identified as such in this document and is referred to as if singular in number. The Architect shall be lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. The Architect shall designate in writing a representative who shall have express authority to bind the Architect with respect to all matters related to the Project. The term "Architect" means the Architect and the authorized representative.

§ 3.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in this document shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 3.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the GMP Documents shall be that of the Architect.

#### § 3.2 ARCHITECT'S GENERAL SERVICES

§ 3.2.1 The Architect shall assist the Owner in establishing a list of prospective contractors for the Project.

§ 3.2.2 The Architect shall manage the Architect's services, consult with the Owner and Contractor, research applicable design criteria, attend Project meetings, and report Project progress to the Owner.

§ 3.2.3 The Architect shall be entitled to rely on the accuracy and completeness of the Contractor's Estimates, as that term is defined in Section 4.2.3, as the Architect progresses with the preparation of the Criteria Design, Detailed Design and Implementation Documents. The Architect shall prepare, as an Additional Service, revisions required due to inaccuracies or incompleteness in the Contractor's Estimates. The Architect shall review the Contractor's Estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

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§ 3.2.4 The Architect shall, at appropriate times, contact the governmental authorities required to approve the GMP Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to and satisfy applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.2.5 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect shall generate documents suitable for submission to the necessary governmental authorities.

#### ARTICLE 4 CONTRACTOR

##### § 4.1 GENERAL

§ 4.1.1 The Contractor is the person or entity identified as such in this document and is referred to as if singular in number. The Contractor shall be lawfully licensed in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters related to the Project. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 4.1.2 If the employment of the Contractor is terminated but the Project is not terminated, the Owner shall employ a successor contractor whose status under the GMP Documents shall be that of the Contractor.

##### § 4.2 GENERAL CONSULTATION RESPONSIBILITIES

§ 4.2.1 Throughout the development of the GMP Documents, the Contractor shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Contractor shall also provide recommendations on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, the Owner's Budget for the Work, and possible cost reductions.

§ 4.2.2 The Contractor shall assist the Owner in connection with the Owner's responsibility for obtaining approval for the Work from governmental authorities having jurisdiction over the Project.

§ 4.2.3 The Contractor shall provide estimating services throughout the design of the Project as specifically required in Articles 5, 6 and 7, and at other various times agreed to by the Owner, Architect and Contractor. The Contractor shall provide estimates of the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit (Contractor's Estimate). The Contractor's Estimate shall not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, or other costs that are the responsibility of the Owner. The Contractor's Estimates shall increase in detail and refinement as the Architect progresses with the preparation of the Criteria Design, Detailed Design and Implementation Documents.

§ 4.2.3.1 In preparing the Contractor's Estimates, the Contractor shall include contingencies for design, procurement, and reasonable price escalation. The Contractor's Estimate shall be based on current area, volume or similar conceptual estimating techniques.

§ 4.2.4 For each of the Contractor's Estimates, provided pursuant to Section 4.2.3, the Contractor shall provide adequate detail to support the estimate. The Contractor shall submit its estimates for the Architect's review and the Owner's acceptance. The Contractor shall advise the Owner and Architect if it appears that any of Contractor's Estimates may exceed the Owner's most recent Budget for the Work and, in consultation with the Architect, make recommendations for corrective action.

§ 4.2.5 The Contractor does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price.

§ 4.2.6 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the GMP Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities

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for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the GMP Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 4.2.6, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

## ARTICLE 5 CONCEPTUALIZATION PHASE

§ 5.1 The Owner, Architect and Contractor shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of those requirements. The Architect shall present its preliminary evaluation to the Owner and Contractor and discuss possible alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner and Contractor regarding the requirements of the Project.

§ 5.2 As soon as practicable, the Architect shall submit to the Owner and Contractor a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project.

§ 5.3 The Contractor shall prepare and periodically update a Project schedule in collaboration with the Architect. The Project schedule shall coordinate and integrate the Contractor's services, the Architect's services, and the Owner's responsibilities, and highlight items that could affect the Project's timely completion.

§ 5.4 Once the Owner, Architect and Contractor agree to the time limits established by the Project schedule, the Owner, Architect and Contractor shall not exceed them, except for reasonable cause.

§ 5.5 The Architect and Contractor shall provide a preliminary evaluation of the Owner's program and Budget for the Work, each in terms of the other as well as recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall take into consideration cost information, constructability, and procurement and construction scheduling issues. To the extent possible, the information shall be integrated into the Model.

## ARTICLE 6 CRITERIA DESIGN PHASE

§ 6.1 The Architect, in consultation with the Contractor, shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 6.2 Based on the Owner's approval of the preliminary design, the Architect, in consultation with the Contractor, shall prepare Criteria Design Documents for the Owner's approval. The Criteria Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, and Models. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 6.2.1 Together, the Architect, Contractor, and Owner shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and Budget for the Work.

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§ 6.2.2 Together, the Architect, Contractor, and Owner shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and Budget for the Work.

§ 6.3 During the Criteria Design Phase, the Architect shall meet with the Owner and Contractor as appropriate to the progress of the design to review the Criteria Design Documents as necessary.

§ 6.4 The Contractor shall obtain information from potential Subcontractors and material suppliers regarding proposed systems or products, including material procurement scheduling, product data sheets, life cycle and energy efficiency data, cost data necessary to validate estimates and schedules for their scopes of work, tolerances, and prefabrication opportunities.

§ 6.5 The Contractor, for the Architect's review and the Owner's acceptance, shall prepare a procurement schedule for items that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Contractor. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Contractor and the Contractor shall thereafter accept responsibility for them.

§ 6.6 At the conclusion of the Criteria Design Phase, the Owner, Architect and Contractor shall meet to review the Criteria Design Documents.

§ 6.7 Based upon the Criteria Design Documents, the Contractor shall update the Contractor's Estimate and Project schedule.

§ 6.7.1 If revisions to the Criteria Design Documents are required to comply with the Owner's Budget for the Work at the conclusion of the Criteria Design Phase, the Architect shall consult with the Owner and Contractor to determine appropriate solutions. The Architect shall then incorporate any agreed-upon revisions during the Detailed Design Phase.

#### ARTICLE 7 DETAILED DESIGN PHASE

§ 7.1 Based on the Owner's approval of the Criteria Design Documents, as well as the Owner's authorization of any adjustments in the Project requirements and the Owner's Budget for the Work pursuant to Section 2.2.3, the Architect, in consultation with the Owner and Contractor, shall prepare Detailed Design Documents for the Owner's approval. The Detailed Design Documents shall illustrate and describe the development of the approved Criteria Design Documents and shall consist of drawings, other documents and the Model.

§ 7.2 During the Detailed Design Phase, the Architect shall meet with the Owner and Contractor as appropriate and necessary to the progress of the design to review the Detailed Design Documents.

§ 7.3 Prior to the conclusion of the Detailed Design Phase, the Contractor shall furnish to the Owner and Architect a list of possible Subcontractors and material suppliers.

§ 7.4 The Contractor shall provide updates to the Contractor's Estimate and the Project schedule to ensure consistency with the Detailed Design Documents and to incorporate information received from potential Subcontractors and material suppliers pursuant to Section 6.4. The Contractor shall obtain additional information as needed to coordinate systems, including mechanical, electrical, plumbing and structural, and to verify tolerances.

§ 7.4.1 If the Contractor's Estimate at the conclusion of the Detailed Design Phase exceeds the Owner's Budget for the Work, the Owner shall

- .1 give written approval of an increase in the Owner's Budget for the Work;
- .2 in consultation with the Architect and Contractor, revise the Project program, scope, or quality as required to bring the Contractor's Estimate within the Owner's Budget for the Work; or
- .3 implement any other mutually acceptable alternative.

§ 7.4.2 If the Owner chooses to proceed under Section 7.4.1.2, the Architect, without additional compensation, shall incorporate the agreed upon modifications as necessary to comply with the Owner's Budget for the Work, or the

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Owner's Budget for the Work as adjusted under Section 7.4.1.1. After incorporation of such modifications to comply with this Section 7.4.2, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's Budget for the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

§ 7.5 At the conclusion of the Detailed Design Phase, the Architect shall submit Detailed Design Documents consistent with the Owner's Budget for the Work to the Owner. The Owner, Architect and Contractor shall meet to review the Detailed Design Documents.

§ 7.6 Upon the Owner's acceptance of the Detailed Design Documents, the Contractor shall to the extent practicable as determined in consultation with the IPD team, conduct a buy-out and prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance.

§ 7.7 To the extent that the GMP Documents are anticipated to require further development in the Implementation Documents Phase, the Contractor shall provide in the Guaranteed Maximum Price proposal for such further development consistent with the GMP Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 7.8 The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A complete list of the documents and information used in preparation of the Guaranteed Maximum Price proposal.
- .2 A list of allowances and a statement of their basis.
- .3 A list of the Contractor's clarifications and assumptions, if any, with regard to the GMP Documents and information relied upon in preparation of the Guaranteed Maximum Price proposal.
- .4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories and bid packages including its subcontracts by name and price, allowances, contingencies, general conditions cost, the Contractor's Fee, and other items that comprise the Guaranteed Maximum Price.
- .5 The anticipated date of Substantial Completion upon which the Guaranteed Maximum Price proposal is based, and a schedule for the issuance dates of the Implementation Documents upon which the anticipated Substantial Completion date relies.
- .6 Information required by § 9.19.2.1 (buy-out information).

§ 7.9 The Contractor shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 7.10 Once accepted by the Owner, the Guaranteed Maximum Price, including the written statement required under Section 7.8 as appropriate, shall be set forth in an amendment to the Owner-Contractor Agreement, a copy of which amendment the Owner shall provide to the Architect. Upon the Owner's acceptance of the Guaranteed Maximum Price proposal, the Detailed Design Documents upon which the approved Guaranteed Maximum Price is based shall become part of the GMP Documents.

§ 7.10.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 9.21.3.3.

§ 7.10.2 If no specific provision is made in the Contractor's Guaranteed Maximum Price for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 8 IMPLEMENTATION DOCUMENTS PHASE

§ 8.1 Based on the GMP Documents and the Guaranteed Maximum Price, the Architect and Contractor shall prepare Implementation Documents. The Implementation Documents shall illustrate and describe the further development of the approved GMP Documents and shall set forth in detail the requirements for the construction of the Work.

§ 8.2 The Contractor shall coordinate with Subcontractors and material suppliers to obtain finalized cost information and schedules for their scopes of work and to ensure that the Implementation Documents include sufficient and unambiguous information for completion of the Work.

§ 8.3 During preparation of the Implementation Documents, the Architect shall consider the Contractor's recommendations for substitutions, and shall incorporate that information, as well as cost or product data, into the Implementation Documents.

§ 8.4 The Architect and the Contractor shall incorporate into the Implementation Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 8.5 Pursuant to a schedule the Architect and Contractor agree to, the Contractor shall provide Shop Drawings and other submittals for the Architect's review and approval, and incorporation into the Implementation Documents. The review of such submittals shall be made pursuant to Section 9.12.

§ 8.6 The Owner and the Contractor shall agree, in writing, on the commencement date for construction of the Work. If the Owner and Contractor agree, the Contractor may begin construction of the Work during the Implementation Documents Phase, as appropriate.

§ 8.7 At the conclusion of the Implementation Documents Phase, the Owner, Architect and Contractor shall meet to review the Implementation Documents. Upon the Owner's approval of the Implementation Documents, they shall become part of the GMP Documents and shall take priority over the Detailed Design Documents.

## ARTICLE 9 CONSTRUCTION PHASE

### § 9.1 GENERAL PROVISIONS

§ 9.1.1 The Contractor shall perform the Work in accordance with the GMP Documents.

§ 9.1.2 The Contractor shall not be relieved of obligations to perform the Work in accordance with the GMP Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 9.1.3 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform its services in an expeditious and economical manner consistent with the Owner's interests.

### § 9.2 REVIEW OF GMP DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 9.2.1 The Contractor shall visit the site and become generally familiar with local conditions under which the Work is to be performed and correlate personal observations with requirements of the GMP Documents.

§ 9.2.2 Because the GMP Documents are complementary, the Contractor shall, before starting construction of each portion of the Work, carefully study and compare the various GMP Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2.3 The Contractor is not required to ascertain that the GMP Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

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§ 9.2.4 Due to the responsibility the Contractor assumes throughout the development of the GMP Documents, neither the Owner nor the Architect shall be liable to the Contractor for damages resulting from errors, inconsistencies or omissions the Contractor reports pursuant to Section 9.2.2. However, if the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's requests for information pursuant to Section 9.2.3, the Contractor shall make Claims as provided in Article 13. If the Contractor fails to perform the obligations of either Sections 9.2.2 or 9.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

### § 9.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 9.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

§ 9.3.2 The Contractor shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 9.3.3 The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and Architect monthly.

§ 9.3.4 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 9.3.5 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 9.4 LABOR AND MATERIALS

§ 9.4.1 Unless otherwise provided in the GMP Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 9.21.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 9.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 9.4.4 SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT COMPLIANCE AND REPORTING REQUIREMENTS.

.1 All employment related to the Project shall comply with the South Carolina Illegal Immigration Reform Act (S.C. Act No. 280 of 2008) consisting of Title 8, Chapter 14 of the South Carolina Code of Law (the "Act") and its implementing regulations.

.2 The Contractor and each subcontractor certifies that it will comply with the requirements of the Act, agrees to execute affidavits of compliance upon request by the District, and agrees to provide to the Owner through the Construction Manager any documentation required to establish compliance with the Act by the contractor and any subcontractor or sub-subcontractor.

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.3 NOTHING IN THE CONTRACT DOCUMENTS EXCUSES THE CONTRACTOR FROM THE CONTRACTOR'S DUTIES AND OBLIGATIONS UNDER APPLICABLE LABOR AND IMMIGRATION LAWS OF THE UNITED STATES.

#### § 9.4.5 CRIMINAL HISTORY CHECKS

The Contractor and each subcontractor of any tier shall perform a Sex Offender Registry search, through <http://services.sled.sc.gov/sor/> or a comparable service with the same level of access to the National Sex Offender Registry. An employee who is on the National Sex Offender shall not be assigned duties at the site of the Project without the written consent of the Owner. Once any portion of the building is occupied by the Owner, the Owner reserves the right to require sex offender registry and criminal history screening and Owner approval of personnel assigned to work on the site.

#### § 9.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the GMP Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the GMP Documents and will be free from defects, except for those inherent in the quality of the Work the GMP Documents require or permit. Work, materials, or equipment not conforming to these requirements is defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### § 9.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

#### § 9.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 9.7.1 Unless otherwise provided in the GMP Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured and legally required at the time the Guaranteed Maximum Price is established.

§ 9.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 9.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

#### § 9.7.4 CONCEALED OR UNKNOWN CONDITIONS

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those upon which the parties relied in the development of the GMP Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the GMP Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 13.

§ 9.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the GMP Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

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the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 13.

#### § 9.8 ALLOWANCES

§ 9.8.1 The Contractor shall include in the Contract Sum all allowances stated in the GMP Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 9.8.2 Unless otherwise provided in the GMP Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 9.8.2.1 and (2) changes in Contractor's costs under Section 9.8.2.2.

§ 9.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

#### § 9.9 SUPERINTENDENT

§ 9.9.1 The Contractor shall employ a competent project manager and competent superintendent(s) and necessary assistants who shall be in attendance at the Project sites during performance of the Work. The superintendent(s) shall represent the Contractor, and communications given to the project manager or the superintendent(s) shall be as binding as if given to the Contractor.

§ 9.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed project manager.

§ 9.9.3 The Contractor shall not employ a project manager or superintendent to whom the Owner or Architect object. The Contractor shall not change the project manager or superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

#### § 9.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 9.10.1 The Contractor shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the GMP Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the GMP Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.10.2 Contractor shall prepare a submittal schedule, promptly after the Owner's acceptance of the Guaranteed Maximum Price and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the GMP Documents require that the Contractor provide a submittal schedule and the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Shop Drawings, Product Data, Samples and similar submittals required during the Construction Phase are not GMP Documents.

§ 9.10.3 The Contractor shall perform the Work in general accordance with the most recent construction schedules submitted to the Owner and Architect.

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#### § 9.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the GMP Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved submittals provided during construction. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

#### § 9.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 9.12.1 Shop Drawings are drawings, diagrams, models, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 9.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 9.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 9.12.4 The purpose of Shop Drawings, Product Data, Samples and similar submittals is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the GMP Documents for those portions of the Work for which the GMP Documents require submittals. Review by the Architect is subject to the limitations of Section 9.26.5.2. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the GMP Documents. Submittals that are not required by the GMP Documents may be returned by the Architect without action.

§ 9.12.5 The Contractor shall review for compliance with the GMP Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 9.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals as consistent with the requirements of the Work and the GMP Documents.

§ 9.12.7 The Contractor shall perform no portion of the Work that requires submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 9.12.8 The Work shall be in accordance with approved submittals.

§ 9.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

#### § 9.13 USE OF SITE

The Contractor shall confine operations at the site to times and areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, reasonable directions of the Owner consistent with the needs of use of the sites as functioning public school facilities, and the GMP Documents and shall not unreasonably encumber the site with materials or equipment.

#### § 9.14 CUTTING AND PATCHING

§ 9.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the GMP Documents.

§ 9.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by

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excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

#### § 9.15 CLEANING UP

§ 9.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of various phases or locations of the Work, or when an area is otherwise meant to be returned to Owner use temporarily according to phasing and safety plans, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about that portion of the site..

§ 9.15.2 If the Contractor fails to clean up as provided in the GMP Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

#### § 9.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

#### § 9.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the GMP Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

#### § 9.18 INDEMNIFICATION

§ 9.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Owner's consultants, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 9.18.

§ 9.18.2 In claims against any person or entity indemnified under this Section 9.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 9.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### § 9.19 SUBCONTRACTORS

##### § 9.19.1 DEFINITIONS

§ 9.19.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the GMP Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or Subcontractors of a separate contractor.

§ 9.19.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the GMP Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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**§ 9.19.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

§ 9.19.2.1 Owner and Architect shall have full access to Contractor's buy-out of the Project. Contractor shall include in its GMP Proposal the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) selected for each package of Work and approved in advance by the Owner.

§ 9.19.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 9.19.2.3 [Number not used.]

§ 9.19.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

**§ 9.19.3 SUBCONTRACTUAL RELATIONS**

Each Subcontractor, to the extent of the Work to be performed by the Subcontractor, is bound to the Contractor by terms of the GMP Documents, and assumes toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the GMP Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the GMP Documents, has against the Owner. Each Subcontract contains the same agreements with regard to Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the GMP Documents and other documents to which the Subcontractor will be bound.

**§ 9.19.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

§ 9.19.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 7.2.2 of the Owner-Contractor Agreement and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 9.19.4.2 [Number not used].

§ 9.19.4.3 Upon such assignment to the Owner under this Section 9.19.4, the Owner may further assign the subcontract to a successor contractor or other entity.

**§ 9.20 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

**§ 9.20.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

§ 9.20.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 13.

§ 9.20.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the GMP Documents in each case shall mean the Contractor who executes each separate contract.

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§ 9.20.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 9.20.1.4 Unless otherwise provided in the GMP Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Contract.

#### § 9.20.2 MUTUAL RESPONSIBILITY

§ 9.20.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the GMP Documents.

§ 9.20.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 9.20.2.3 Each Contractor shall pay costs incurred by a separate contractor because of the Contractor's delays, improperly timed activities or defective construction.

§ 9.20.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner, separate contractors as provided in Section 9.25.2.5.

§ 9.20.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 9.14.

#### § 9.20.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

#### § 9.21 CHANGES IN THE WORK

##### § 9.21.1 GENERAL

§ 9.21.1.1 Changes in the Work may be accomplished after execution of the Contract without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Section 9.21 and elsewhere in the GMP Documents.

§ 9.21.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 9.21.1.3 Changes in the Work shall be performed under applicable provisions of the GMP Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

##### § 9.21.2 CHANGE ORDERS

§ 9.21.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

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### § 9.21.3 CONSTRUCTION CHANGE DIRECTIVES

§ 9.21.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 9.21.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 9.21.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the GMP Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 9.21.3.7.

§ 9.21.3.4 If unit prices are stated in the GMP Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.21.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work.

§ 9.21.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 9.21.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Owner-Contractor Agreement, or if no such amount is set forth in the Owner-Contractor Agreement, a reasonable amount. In such case, and also under Section 9.21.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the GMP Documents, costs for the purposes of this Section 9.21.3.7 shall be limited to the following, and only in reasonable amounts:

- .1 Costs of labor, including social security and unemployment insurance, fringe benefits required by agreement, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 9.21.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 9.21.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for

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Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 13.

§ 9.21.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 9.21.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time, if not inconsistent with Owner instructions to the Architect and not inconsistent with the intent of the GMP Documents. Prior to issuing a Minor Change, the Architect shall notify the Contractor and Owner of the nature, extent and anticipated time of issuance of the proposed directive. The Architect and Contractor shall make adjustments to the GMP Documents to reflect the proposed directive for the review of the Owner, Architect and Contractor. The Contractor must determine the effect of the proposed directive on the cost and time of completion of the Work and on the Contractor's ability to construct the work in accordance with the revised GMP Documents and provide appropriate recommendations to the Owner and Architect. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

#### § 9.22 TIME

##### § 9.22.1 DEFINITIONS

§ 9.22.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the GMP Documents for Substantial Completion of the Work after commencement of Construction.

§ 9.22.1.2 The date of Substantial Completion is the date certified by the Architect in accordance with Section 10.1. An Office of School Facilities ("OSF") occupancy permit does not suffice to certify Substantial Completion for purposes of these Contract Documents.

§ 9.22.1.3 The term "day" as used in the GMP Documents shall mean calendar day unless otherwise specifically defined.

##### § 9.22.2 PROGRESS AND COMPLETION

§ 9.22.2.1 Time limits stated in the GMP Documents for the Substantial Completion of the Work are of the essence of the Contract. By executing the GMP Amendment the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 9.22.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 9.22.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

##### § 9.22.3 DELAYS AND EXTENSIONS OF TIME

§ 9.22.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by causes that justify delay, as more specifically addressed in the following subsections, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 9.22.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 13. The Contractor waives any Claim relating to time that is not made in accordance with applicable provisions of Article 13. The Contractor also waives and releases any Claim for additional costs of any nature premised upon the Owner's failure to give an extension of time, unless the Contractor has given to Owner and Architect, within the applicable time limits set forth in the Contract Documents, a proper Claim for the time.

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§ 9.22.3.3 The Contractor is not entitled to an extension of time, compensation of any nature, costs, or damages, if the Contractor is delayed by any event or the occurrence of any risk, either of which was within the scope of the Contractor's contractual responsibility to foresee, estimate, predict, acquire, control, plan for, contract for, and manage in order to accomplish the Work required by the Contract Documents. The Contractor's responsibilities include, but are not limited to, the following:

- .1 Anticipating and accounting for variable and inconsistent labor, materials, supplies, and site access;
  - .2 Subcontractor and supplier insolvency, default, non-performance (including the performance and correction of non-conforming work), and financial non-responsibility; and
  - .3 Other events for which the Contractor has the risk of anticipating and managing in order to accomplish the Work within the price and time called for in the Contract.
- Assessment of the existence of the basis for a time extension shall be determined by the Contractor's construction schedule.

§ 9.22.3.4 A basis may exist for an extension of time if:

- .1 The Contractor is delayed in performing the Work, but solely to the extent that delays are caused by events that are beyond the control and/or contractual responsibility of the Contractor, its subcontractors, sub-subcontractors, and suppliers at every tier;
- .2 Delays directly impact the Contractor's ability to achieve Completion of the Work in accordance with the Contract Time requirements established by the Contract Documents, as amended by executed Change Order;
- .3 Delays cannot be made up by reasonable efforts; and
- .4 Delays stem from the following causes:
  - a. Class 1 causes: (i) an act or failure to act on the part of the Owner, any consultant or employee of the Owner, or of a separate contractor employed by the Owner that is a breach of this Agreement; or (ii) an injunction against Owner or Owner's representatives;
  - b. Class 2 causes: A Class 2 cause of delay is any other cause of delay not the responsibility of either the Owner or the Contractor, as defined herein. Such causes, include, but are not limited to inclement weather; acts of God; fire; riots; civil commotions; acts of War; unavoidable casualties to the Work in progress, except where insurance pays the cost of resulting delays or extended General Conditions costs; epidemics; quarantine restrictions; organized labor disputes; freight embargoes; unanticipated and undiscoverable environmental issues (except as to matters addressed in Article 10); abnormal labor and material shortages not customarily encountered or caused by events not reasonable foreseeable; or other cause traditionally defined as "force majeure."

§ 9.22.3.5 If the basis exists for an extension of time and the Contractor has timely submitted a Claim documenting the basis for such extension, the Owner may exercise one of the following options:

- .1 For Class 1 causes, the Owner may accept a reasonable and appropriate time extension to cover such delay and grant a corresponding adjustment in the Contract Sum. The Contract Sum will be adjusted only to the extent of those necessary and reasonable on-site costs incurred by the field office and such other job site costs made necessary as a consequence of the delay;
- .2 For Class 2 causes, the Owner may accept a reasonable and appropriate time extension to cover such delay and there will be no corresponding adjustment in the Contract Sum. The Contractor's sole recourse will be entitlement to a time extension, regardless of actual sources or causes of delay;
- .3 The Owner may order the Contractor to accelerate construction activity by working overtime and by adding extra forces in order to overcome such delays, after the Contractor's submission to the Owner of a good faith estimate of the costs of such acceleration. The Owner may then adjust the Contract Sum compensate the Contractor for such directed acceleration. The Contractor's direct costs used in determining such adjustment to the Contract Sum are limited to properly substantiated and documented premium or overtime labor costs or other costs necessary to accomplish such acceleration; or

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.4 The Owner may employ a combination of the above remedies.

§ 9.22.3.6 Neither the Owner nor the Architect will be obligated or liable to Contractor for, and Contractor hereby expressly waives claims against Owner and Architect on account of, damages, costs, expenses, or related impacts that the Contractor, its Subcontractors, sub-subcontractors, suppliers, or other persons may incur as a result of a Class 2 cause. The Contractor likewise waives claims for damages, costs, or expenses incurred by the Contractor, its Subcontractors, sub-subcontractors, and suppliers due to a delay resulting from a Class 1 cause, except and solely to the extent of those costs allowed under Section 9.21.3.7, plus any necessary site-specific General Conditions costs incurred by the Contractor as a result of the delay.

§ 9.22.3.7 The Contractor is not entitled to a separate extension of the Contract Time for each one of the causes of delay that may have concurrent or interrelated effects on the progress of the Work. Concurrent causes of delay shall be considered a single delay. Furthermore, the Contractor is not entitled to an extension of time for concurrent delays that include delays due to the fault of the Contractor that, regardless of the delay caused by the Owner, increase the duration of the Work.

§ 9.22.3.8 The Contractor shall not be entitled to any additional compensation for its inability to complete the Work early (or prior to the date of Substantial Completion set forth in the Agreement) due to a Class 1 or Class 2 cause.

## § 9.23 PAYMENTS

### § 9.23.1 CONTRACT SUM

The Contract Sum is the total amount payable by the Owner to the Contractor for performance of the Work under the GMP Documents, subject to the Guaranteed Maximum Price.

### § 9.23.2 SCHEDULE OF VALUES

The Contractor shall submit to the Architect and Owner, before the first Application for Payment submitted for construction of the Work, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, once accepted by the Architect and Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 9.23.3 APPLICATIONS FOR PAYMENT

§ 9.23.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage provided for in the GMP Documents.

§ 9.23.3.1.1 As provided in Section 9.21.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.23.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.23.3.2 Unless otherwise provided in the GMP Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the reasonable and necessary costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.23.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for

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Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § 9.23.4 CERTIFICATES FOR PAYMENT

§ 9.23.4.1 The Architect will consult with the Owner as to each Application for Payment and, within seven days after receipt of the Contractor's properly completed and substantiated Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.23.5.1.

§ 9.23.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the GMP Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the GMP Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the GMP Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will recommend payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.23.4.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

#### § 9.23.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.23.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.23.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.23.4.1. If the Contractor, Owner, and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 damage to the Owner or a separate contractor;
- .5 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .6 failure to carry out the Work in accordance with the GMP Documents.

§ 9.23.5.2 If the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.23.5.3 If the Architect withholds certification for payment under Section 9.23.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such

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payment on the next Certificate for Payment. Owner is not required in any way to use, or refrain from use of, its rights in this clause for the benefit of any party for any reason.

#### § 9.23.6 PROGRESS PAYMENTS

§ 9.23.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the GMP Documents, and shall so notify the Architect.

§ 9.23.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.23.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.23.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.23.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.23.6.2, 9.23.6.3 and 9.23.6.4.

§ 9.23.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work.

§ 9.23.6.7 [Number not used.]

#### § 9.23.7 FAILURE OF PAYMENT

See South Carolina Code Ann. § 29-6-10 *et seq.*

#### § 9.23.8 PARTIAL OCCUPANCY OR USE

§ 9.23.8.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the GMP Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 10.1.4. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.23.8.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.23.8.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the GMP Documents.

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## § 9.24 PROTECTION OF PERSONS AND PROPERTY

### § 9.24.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 9.24.2 SAFETY OF PERSONS AND PROPERTY

§ 9.24.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby, most especially the students on site;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction, and
- .4 finishes, fixtures, equipment, furniture, permanent signage, automobiles, artwork, display cases, memorabilia, electronics, textbooks, school supplies, library books, stored media in all formats, occupants' personal effects, and similar property normally encountered within the school environment.

§ 9.24.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 9.24.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 9.24.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 9.24.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the GMP Documents) to property referred to in Sections 9.24.2.1.2 and 9.24.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 9.24.2.1.2 and 9.24.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.18.

§ 9.24.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 9.24.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

### § 9.24.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If Owner or Contractor suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other to investigate the matter.

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### § 9.24.3 HAZARDOUS MATERIALS

§ 9.24.3.1 The Contractor is responsible for compliance with any requirements included in the GMP Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the GMP Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 9.24.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the GMP Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 9.24.3.3 [Number not used.] [Note: BSCD1 cannot indemnify 3rd parties. Look at managing this risk through Contractor's insurance program.]

§ 9.24.3.4 The Owner shall not be responsible under this Section 9.24.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the GMP Documents. The Owner shall be responsible for materials or substances required by the GMP Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 9.24.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 9.24.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 9.24.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the GMP Documents, the Owner shall reimburse the Contractor for actual cost charged to the Contractor by the government agency.

### § 9.24.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 13 and Section 9.21.

### § 9.25 UNCOVERING AND CORRECTION OF WORK

#### § 9.25.1 UNCOVERING OF WORK

§ 9.25.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the GMP Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 9.25.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the GMP Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the GMP Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

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## **§ 9.25.2 CORRECTION OF WORK**

### **§ 9.25.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the GMP Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

### **§ 9.25.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 9.25.2.2.1** In addition to the Contractor's obligations under Section 9.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.23.8.1, or by terms of an applicable special warranty required by the GMP Documents, any of the Work is found to be not in accordance with the requirements of the GMP Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 9.25.2.7.

**§ 9.25.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 9.25.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 9.25.2.

**§ 9.25.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the GMP Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 9.25.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the GMP Documents.

**§ 9.25.2.5** Nothing contained in this Section 9.25.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the GMP Documents. Establishment of the one-year period for correction of Work as described in Section 9.25.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the GMP Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§ 9.25.2.6 OWNER'S RIGHT TO STOP THE WORK**

Upon commencement of the Work, if the Contractor fails to correct Work that is not in accordance with the requirements of the GMP Documents as required by Section 9.25.2 or repeatedly fails to carry out Work in accordance with the GMP Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 9.20.1.3.

### **§ 9.25.2.7 OWNER'S RIGHT TO CARRY OUT THE WORK**

Upon commencement of the Work, if the Contractor defaults or neglects to carry out the Work in accordance with the GMP Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of

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correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

#### § 9.25.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the GMP Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

#### § 9.26 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 9.26.1 The Architect shall provide administration of the Contract as set forth below.

§ 9.26.2 The Architect shall advise and consult with the Owner during the Construction Phase. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the GMP Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 9.26.3 The Architect responsibility to administer the Contract terminates on the date the Architect issues the final Certificate for Payment.

#### § 9.26.4 EVALUATIONS OF THE WORK

§ 9.26.4.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 1.5.4 in the Agreement between the Owner and Architect, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the GMP Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall create and distribute to the Project participants frequent site visit reports containing narrative and photographic progress updates and summaries of the site visit, and otherwise keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Project participants (1) known or suspected deviations from the GMP Documents and from the most recent construction schedule, and (2) known or suspected defects and deficiencies observed in the Work.

§ 9.26.4.2 The Architect has the authority to reject Work that does not conform to the GMP Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the GMP Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 9.26.4.3 The Architect, in consultation with the other Project participants, shall interpret and decide matters concerning performance under, and requirements of, the GMP Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 9.26.4.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the GMP Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the GMP Documents.

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#### § 9.26.5 SUBMITTALS

§ 9.26.5.1 The Architect shall review the Contractor's submittal schedule, if any, and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 9.26.5.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the GMP Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 9.26.5.3 If the GMP Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 9.26.5.4 The Architect shall review and respond to requests for information about the GMP Documents. The Architect shall set forth in the GMP Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 9.26.5.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the GMP Documents.

#### ARTICLE 10 CLOSEOUT PHASE

##### § 10.1 PROJECT COMPLETION

§ 10.1.1 The Architect and its consultants shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the GMP Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the GMP Documents.

§ 10.1.2 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the GMP Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 10.1.3 The Architect's and Consultants' inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the GMP Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. Work designed by Consultants pursuant to professional license(s) must be inspected and approved by the same professionally licensed Consultant or another principal in the Consultant's firm who holds the same professional license(s). The presence of the Owner or any third party during these inspections does not alter the responsibilities of the parties.

§ 10.1.4 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of

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items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the GMP Documents.

§ 10.1.5 Upon receipt of the Contractor's list, the Architect and Consultants will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If these inspections disclose any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the GMP Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect and Consultants to determine Substantial Completion.

§ 10.1.6 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the GMP Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 10.1.7 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the GMP Documents.

§ 10.1.8 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 10.1.9 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the GMP Documents.

## § 10.2 FINAL COMPLETION AND FINAL PAYMENT

§ 10.2.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and relevant Consultants will promptly make such inspection and, when the Architect finds the Work acceptable under the GMP Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the GMP Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 10.2.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 10.2.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the GMP Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the GMP Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

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§ 10.2.3 [Number not used.].

§ 10.2.4  
(Paragraphs deleted)  
[Number not used.]

§ 10.2.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 After consultation with the Owner as to the insurance needs of the Project, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 9.18; and
- .9 Any other coverages agreed upon.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the GMP Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the GMP Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the GMP Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

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## § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the GMP Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 10.2 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 *[Number not used.]*

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.23.8 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

## § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the GMP Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

## § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

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§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Section 9.20, if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Section 9.20, if any, and the Subcontractors, Sub-subcontractors, agents and employees of any of them similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Section 9.21.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor must furnish bonds meeting the standards for such bonds stated in the South Carolina Consolidated Procurement Code covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the GMP Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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## ARTICLE 12 MISCELLANEOUS PROVISIONS

### § 12.1 SUCCESSORS AND ASSIGNS

§ 12.1.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the GMP Documents. Except as provided in Section 12.1.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 12.1.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the GMP Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 12.2 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 12.3 RIGHTS AND REMEDIES

§ 12.3.1 Duties and obligations imposed by the GMP Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 12.3.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### § 12.4 TESTS AND INSPECTIONS

§ 12.4.1 Tests, inspections and approvals of portions of the Work shall be made as required by the GMP Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 12.4.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 12.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 12.4.3, shall be at the Owner's expense.

§ 12.4.3 If such procedures for testing, inspection or approval under Sections 12.4.1 and 12.4.2 reveal failure of the portions of the Work to comply with requirements established by the GMP Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 12.4.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the GMP Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 12.4.5 If the Architect is to observe tests, inspections or approvals required by the GMP Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

Init.

§ 12.4.6 Tests or inspections conducted pursuant to the GMP Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § 12.5 INTEREST

Payments due and unpaid under the GMP Documents shall bear interest from the date payment is due at the United States Prime Rate as listed in the Eastern print edition of the *Wall Street Journal* as of the date the payment becomes overdue.

#### § 12.6 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with Article 13 within the time period specified by applicable law.

### ARTICLE 13 CLAIMS AND DISPUTES

#### § 13.1 CLAIMS

##### § 13.1.1 DEFINITION

A Claim is a demand or assertion by the Owner, or Contractor seeking, as a matter of right, payment of money, or other relief with respect to disputes and matters in question between arising out of or relating to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

##### § 13.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Architect as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

##### § 13.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.23.7 and Article 7 of the Owner-Contractor Agreement, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the GMP Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

##### § 13.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 9.24.4.

##### § 13.1.5 CLAIMS FOR ADDITIONAL TIME

§ 13.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost (where otherwise allowable) and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 13.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

##### § 13.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to the Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

Init.

- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

This mutual waiver is applicable, without limitation, to all consequential damages due to the termination of the Owner-Contractor Agreement. Nothing contained in this Section 13.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the GMP Documents.

## § 13.2 INITIAL DECISION

§ 13.2.1 Claims arising after the commencement date of the Work, excluding those arising under Sections 9.24.3, 9.24.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Owner-Contractor Agreement. Except for those Claims excluded by this Section 13.2.1, an initial decision shall be required as a condition precedent to mediation of any such Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 13.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 13.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 13.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 13.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 13.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 13.2.6.1.

§ 13.2.6.1 [Number not used.]

§ 13.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 13.2.8 [Number not used.]

Init.

§ 13.3 MEDIATION

§ 13.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Project except those waived as provided for in Sections 10.2.4, 10.2.5, and 13.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 13.3.2 The parties shall endeavor to resolve their Claims by mediation before an agreed-upon neutral. . A request for mediation shall be made in writing. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 13.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the a location mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 13.4 [Number not used.]

(Paragraphs deleted)

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### **PAGE 1**

Elementary School #8.

...

School District No. 2 of Spartanburg County, South Carolina

...

Jumper Carter Sease Architects P.A.  
412 Meeting St  
West Columbia, SC 29169-7533

...

Thompson Turner Construction, a division of Thompson Construction Group, Inc.  
100 N. Main  
Sumter, SC 29150

### **PAGE 10**

The program will be developed based upon the most cost-effective solution to satisfy the priorities of the Owner within the available resources and schedule.

...

Site to be acquired.

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...

...

to be determined

...

to be determined

...

to be determined

...

N/A

...

To be determined during preconstruction phase consultations.

PAGE 11

N/A

...

Don Icenhower

...

to be determined

...

none

...

Todd Sease, AIA, Principal in Charge

...

to be determined

...

to be determined

...

to be determined

...

Kitchen: to be determined

Civil: to be determined

...

Principal in Charge = to be determined

Project Manager = to be determined

Site Superintendant = to be determined

PAGE 12

To be determined.

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§ 2.1.5 The Owner shall furnish to the Architect and Contractor, within fifteen days after receipt of a written request, information necessary and relevant to ~~evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~ give notice of, project commencement.

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§ 3.2.4 The Architect shall, at appropriate times, contact the governmental authorities required to approve the GMP Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to and satisfy applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

...

§ 4.1.1 The Contractor is the person or entity identified as such in this document and is referred to as if singular in number. The Contractor shall be lawfully ~~licensed, if required licensed~~ in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters related to the Project. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 4.1.2 If the employment of the Contractor is ~~terminated but the Project is not terminated~~, the Owner shall employ a successor contractor as to whom the Architect has no reasonable objection and whose status under the GMP Documents shall be that of the Contractor.

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§ 6.2.1 ~~The Architect Together, the Architect, Contractor, and Owner~~ shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and Budget for the Work. ~~The Owner may obtain other environmentally responsible design services as an Additional Service.~~

§ 6.2.2 ~~The Architect Together, the Architect, Contractor, and Owner~~ shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and Budget for the Work.

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§ 6.4 The Contractor shall obtain information from potential Subcontractors and material suppliers regarding proposed systems or products, including material procurement scheduling, product data sheets, life cycle and energy efficiency data, cost data necessary to validate estimates and schedules for their scopes of work, tolerances, and prefabrication opportunities.

...

§ 7.4 The Contractor shall provide updates to the Contractor's Estimate and the Project schedule to ensure consistency with the Detailed Design Documents and to incorporate information received from potential Subcontractors and material suppliers pursuant to Section 6.4. The Contractor shall require any such Subcontractors and material suppliers to provide obtain additional information as needed to coordinate systems, including mechanical, electrical, plumbing and structural, and to verify tolerances.

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§ 7.6 Upon the Owner's acceptance of the Detailed Design Documents, the Contractor shall to the extent practicable as determined in consultation with the IPD team, conduct a buy-out and prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance.

...

- .4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingencies, categories and bid packages including its subcontracts by name and price, allowances, contingencies, general conditions cost, the Contractor's Fee, and other items that comprise the Guaranteed Maximum Price.
- .5 The anticipated date of Substantial Completion upon which the Guaranteed Maximum Price proposal is based, and a schedule for the issuance dates of the Implementation Documents upon which the anticipated Substantial Completion date relies.
- .6 Information required by § 9.19.2.1 (buy-out information).

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§ 9.3.3 The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals, monthly.

...

#### § 9.4.4 SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT COMPLIANCE AND REPORTING REQUIREMENTS.

.1 All employment related to the Project shall comply with the South Carolina Illegal Immigration Reform Act (S.C. Act No. 280 of 2008) consisting of Title 8, Chapter 14 of the South Carolina Code of Law (the "Act") and its implementing regulations.

.2 The Contractor and each subcontractor certifies that it will comply with the requirements of the Act, agrees to execute affidavits of compliance upon request by the District, and agrees to provide to the Owner through the Construction Manager any documentation required to establish compliance with the Act by the contractor and any subcontractor or sub-subcontractor.

.3 NOTHING IN THE CONTRACT DOCUMENTS EXCUSES THE CONTRACTOR FROM THE CONTRACTOR'S DUTIES AND OBLIGATIONS UNDER APPLICABLE LABOR AND IMMIGRATION LAWS OF THE UNITED STATES.

#### § 9.4.5 CRIMINAL HISTORY CHECKS

The Contractor and each subcontractor of any tier shall perform a Sex Offender Registry search, through <http://services.sled.sc.gov/sor/> or a comparable service with the same level of access to the National Sex Offender Registry. An employee who is on the National Sex Offender shall not be assigned duties at the site of the Project without the written consent of the Owner. Once any portion of the building is occupied by the Owner, the Owner reserves the right to require sex offender registry and criminal history screening and Owner approval of personnel assigned to work on the site.

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the GMP Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the GMP Documents and will be free from defects, except for those inherent in the quality of the Work the GMP Documents require or permit. Work, materials, or equipment not conforming to these requirements ~~may be considered is~~ defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

PAGE 23

§ 9.9.1 The Contractor shall employ a competent ~~superintendent project manager and competent superintendent(s)~~ and necessary assistants who shall be in attendance at the Project ~~site sites~~ during performance of the Work. The ~~superintendent superintendent(s)~~ shall represent the Contractor, and communications given to the ~~superintendent the project manager or the superintendent(s)~~ shall be as binding as if given to the Contractor.

§ 9.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed ~~superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection. project manager.~~

§ 9.9.3 The Contractor shall not employ a ~~proposed project manager or~~ superintendent to whom the Owner or Architect ~~has made reasonable and timely objection. object.~~ The Contractor shall not change the project manager or superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

...

§ 9.10.2 ~~If the GMP Documents require submittals during the Construction Phase, the Contractor shall prepare a submittal schedule, promptly after the Owner's acceptance of the Guaranteed Maximum Price and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the GMP Documents require that the Contractor provide a submittal schedule and the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Shop Drawings, Product Data, Samples and similar submittals required during the Construction Phase are not GMP Documents.~~

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The Contractor shall confine operations at the site to times and areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities ~~lawful orders of public authorities,~~ reasonable directions of the Owner consistent with the needs of use of the sites as functioning public school facilities, and the GMP Documents and shall not unreasonably encumber the site with materials or equipment.

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§ 9.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of various phases or locations of the Work, or when an area is otherwise meant to be returned to Owner use temporarily according to phasing and safety plans, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about ~~the Project that portion of the site.~~

...

§ 9.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Owner's consultants, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this ~~Section~~ this Section 9.18.

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§ 9.19.2.1 ~~Unless otherwise stated in the GMP Documents the Contractor, as soon as practicable after execution of the Contract, shall furnish in writing to the Owner and Architect the Owner and Architect shall have full access to Contractor's buy-out of the Project. Contractor shall include in its GMP Proposal the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner and Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that additional time is required for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection selected for each package of Work and approved in advance by the Owner.~~

...

§ 9.19.2.3 ~~If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. [Number not used.]~~

...

~~By appropriate agreement, written where legally required for validity, the Contractor shall require each Each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be is bound to the Contractor by terms of the GMP Documents, and to assume assumes toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, Contractor assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the GMP Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the GMP Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Each Subcontract contains the same agreements with regard to Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the GMP Documents and other documents to which the Subcontractor will be bound.~~

...

.2 assignment is subject to the prior rights of the ~~surety, if any, surety~~ obligated under bond relating to the Contract.

...

§ 9.19.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. [Number not used].

§ 9.19.4.3 Upon such assignment to the Owner under this Section 9.19.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

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§ 9.20.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to Each Contractor shall pay costs incurred by a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

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§ 9.21.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. Work.

...

§ 9.21.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Owner-Contractor Agreement, or if no such amount is set forth in the Owner-Contractor Agreement, a reasonable amount. In such case, and also under Section 9.21.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the GMP Documents, costs for the purposes of this Section 9.21.3.7 shall be limited to the following: following, and only in reasonable amounts:

- .1 Costs of labor, including social security, old age security and unemployment insurance, fringe benefits required by agreement or custom, agreement, and workers' compensation insurance;

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The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time. Time, if not inconsistent with Owner instructions to the Architect and not inconsistent with the intent of the GMP Documents. Prior to issuing a Minor Change, the Architect shall notify the Contractor and Owner of the nature, extent and anticipated time of issuance of the proposed directive. The Architect and Contractor shall make adjustments to the GMP Documents to reflect the proposed directive for the review of the Owner, Architect and Contractor. The Contractor should must determine the effect of the proposed directive on the cost and time of completion of the Work and on the Contractor's ability to construct the work in accordance with the revised GMP Documents and provide appropriate recommendations to the Owner and Architect. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

...

§ 9.22.1.2 The date of Substantial Completion is the date certified by the Architect in accordance with Section 10.1. An Office of School Facilities ("OSF") occupancy permit does not suffice to certify Substantial Completion for purposes of these Contract Documents.

...

§ 9.22.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by

changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, causes that justify delay, as more specifically addressed in the following subsections, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 9.22.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 13. The Contractor waives any Claim relating to time that is not made in accordance with applicable provisions of Article 13. The Contractor also waives and releases any Claim for additional costs of any nature premised upon the Owner's failure to give an extension of time, unless the Contractor has given to Owner and Architect, within the applicable time limits set forth in the Contract Documents, a proper Claim for the time.

§ 9.22.3.3 This Section 9.22.3 does not preclude recovery of damages for delay by either party under other provisions of the GMP Documents. The Contractor is not entitled to an extension of time, compensation of any nature, costs, or damages, if the Contractor is delayed by any event or the occurrence of any risk, either of which was within the scope of the Contractor's contractual responsibility to foresee, estimate, predict, acquire, control, plan for, contract for, and manage in order to accomplish the Work required by the Contract Documents. The Contractor's responsibilities include, but are not limited to, the following:

- .1 Anticipating and accounting for variable and inconsistent labor, materials, supplies, and site access;
  - .2 Subcontractor and supplier insolvency, default, non-performance (including the performance and correction of non-conforming work), and financial non-responsibility; and
  - .3 Other events for which the Contractor has the risk of anticipating and managing in order to accomplish the Work within the price and time called for in the Contract.
- Assessment of the existence of the basis for a time extension shall be determined by the Contractor's construction schedule.

§ 9.22.3.4 A basis may exist for an extension of time if:

- .1 The Contractor is delayed in performing the Work, but solely to the extent that delays are caused by events that are beyond the control and/or contractual responsibility of the Contractor, its subcontractors, sub-subcontractors, and suppliers at every tier;
- .2 Delays directly impact the Contractor's ability to achieve Completion of the Work in accordance with the Contract Time requirements established by the Contract Documents, as amended by executed Change Order;
- .3 Delays cannot be made up by reasonable efforts; and
- .4 Delays stem from the following causes:
  - a. Class 1 causes: (i) an act or failure to act on the part of the Owner, any consultant or employee of the Owner, or of a separate contractor employed by the Owner that is a breach of this Agreement; or (ii) an injunction against Owner or Owner's representatives;
  - b. Class 2 causes: A Class 2 cause of delay is any other cause of delay not the responsibility of either the Owner or the Contractor, as defined herein. Such causes, include, but are not limited to inclement weather; acts of God; fire; riots; civil commotions; acts of War; unavoidable casualties to the Work in progress, except where insurance pays the cost of resulting delays or extended General Conditions costs; epidemics; quarantine restrictions; organized labor disputes; freight embargoes; unanticipated and undiscoverable environmental issues (except as to matters addressed in Article 10); abnormal labor and material shortages not customarily encountered or caused by events not reasonable foreseeable; or other cause traditionally defined as "force majeure."

§ 9.22.3.5 If the basis exists for an extension of time and the Contractor has timely submitted a Claim documenting the basis for such extension, the Owner may exercise one of the following options:

- .1 For Class 1 causes, the Owner may accept a reasonable and appropriate time extension to cover such delay and grant a corresponding adjustment in the Contract Sum. The Contract Sum will be

- adjusted only to the extent of those necessary and reasonable on-site costs incurred by the field office and such other job site costs made necessary as a consequence of the delay;
- .2 For Class 2 causes, the Owner may accept a reasonable and appropriate time extension to cover such delay and there will be no corresponding adjustment in the Contract Sum. The Contractor's sole recourse will be entitlement to a time extension, regardless of actual sources or causes of delay;
  - .3 The Owner may order the Contractor to accelerate construction activity by working overtime and by adding extra forces in order to overcome such delays, after the Contractor's submission to the Owner of a good faith estimate of the costs of such acceleration. The Owner may then adjust the Contract Sum compensate the Contractor for such directed acceleration. The Contractor's direct costs used in determining such adjustment to the Contract Sum are limited to properly substantiated and documented premium or overtime labor costs or other costs necessary to accomplish such acceleration; or
  - .4 The Owner may employ a combination of the above remedies.

§ 9.22.3.6 Neither the Owner nor the Architect will be obligated or liable to Contractor for, and Contractor hereby expressly waives claims against Owner and Architect on account of, damages, costs, expenses, or related impacts that the Contractor, its Subcontractors, sub-subcontractors, suppliers, or other persons may incur as a result of a Class 2 cause. The Contractor likewise waives claims for damages, costs, or expenses incurred by the Contractor, its Subcontractors, sub-subcontractors, and suppliers due to a delay resulting from a Class 1 cause, except and solely to the extent of those costs allowed under Section 9.21.3.7, plus any necessary site-specific General Conditions costs incurred by the Contractor as a result of the delay.

§ 9.22.3.7 The Contractor is not entitled to a separate extension of the Contract Time for each one of the causes of delay that may have concurrent or interrelated effects on the progress of the Work. Concurrent causes of delay shall be considered a single delay. Furthermore, the Contractor is not entitled to an extension of time for concurrent delays that include delays due to the fault of the Contractor that, regardless of the delay caused by the Owner, increase the duration of the Work.

§ 9.22.3.8 The Contractor shall not be entitled to any additional compensation for its inability to complete the Work early (or prior to the date of Substantial Completion set forth in the Agreement) due to a Class 1 or Class 2 cause.

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The Contractor shall submit to the ~~Architect, Architect and Owner,~~ before the first Application for Payment submitted for construction of the Work, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect ~~may require. This schedule, unless objected to by the Architect, or Owner may require. This schedule, once accepted by the Architect and Owner,~~ shall be used as a basis for reviewing the Contractor's Applications for Payment.

...

§ 9.23.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.23.2, values for completed portions of the Work. Such application shall be notarized, if required, notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the GMP Documents.

...

§ 9.23.3.2 Unless otherwise provided in the GMP Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such

materials and equipment or otherwise protect the Owner's interest, and shall include the reasonable and necessary costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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§ 9.23.4.1 The Architect ~~will~~ will consult with the Owner as to each Application for Payment and, within seven days after receipt of the Contractor's properly completed and substantiated Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.23.5.1.

§ 9.23.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the GMP Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the GMP Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the GMP Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will ~~further constitute a representation that the Contractor is entitled to recommend~~ payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

...

§ 9.23.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.23.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.23.4.1. ~~If the Contractor, Contractor, Owner, and~~ Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.3.2, because of

...

.6 ~~repeated~~ failure to carry out the Work in accordance with the GMP Documents.

§ 9.23.5.2 ~~When~~ If the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.23.5.3 If the Architect withholds certification for payment under Section 9.23.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. Owner is not required in any way to use, or refrain from use of, its rights in this clause for the benefit of any party for any reason.

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§ 9.23.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the GMP Documents. Work.

§ 9.23.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for these Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. [Number not used.]

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the GMP Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the GMP Documents. See South Carolina Code Ann. § 29-6-10 et seq.

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- .1 employees on the Work and other persons who may be affected ~~thereby;~~ thereby, most especially the students on site;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of ~~construction.~~ construction, and
- .4 finishes, fixtures, equipment, furniture, permanent signage, automobiles, artwork, display cases, memorabilia, electronics, textbooks, school supplies, library books, stored media in all formats, occupants' personal effects, and similar property normally encountered within the school environment.

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§ 9.24.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 9.24.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. [Number not used.] [Note: BSCD1 cannot indemnify 3rd parties. Look at managing this risk through Contractor's insurance program.]

...

§ 9.24.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the GMP Documents, the Owner shall ~~indemnify the Contractor for all cost and expense thereby incurred.~~ reimburse the Contractor for actual cost charged to the Contractor by the government agency.

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Upon commencement of the Work, if the Contractor defaults or neglects to carry out the Work in accordance with the GMP Documents and fails within a ~~ten-day~~ seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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§ 9.26.4.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 1.5.4 in the Agreement between the Owner and Architect, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the GMP Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall create and distribute to the Project participants frequent site visit reports containing narrative and photographic progress updates and summaries of the site visit, and otherwise keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner Project participants (1) known or suspected deviations from the GMP Documents and from the most recent construction schedule, and (2) known or suspected defects and deficiencies observed in the Work.

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§ 10.1.1 The Architect and its consultants shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the GMP Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the GMP Documents.

...

§ 10.1.3 The Architect's and Consultants' inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the GMP Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. Work designed by Consultants pursuant to professional license(s) must be inspected and approved by the same professionally licensed Consultant or another principal in the Consultant's firm who holds the same professional license(s). The presence of the Owner or any third party during these inspections does not alter the responsibilities of the parties.

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§ 10.1.5 Upon receipt of the Contractor's list, the Architect and Consultants will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses these inspections disclose any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the GMP Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect and Consultants to determine Substantial Completion.

...

§ 10.2.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and relevant Consultants will promptly make such

inspection and, when the Architect finds the Work acceptable under the GMP Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the GMP Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 10.2.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 10.2.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the GMP Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the GMP Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 10.2.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the GMP Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. [Number not used.]

§ 10.2.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from  
1. ~~liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~  
2. ~~failure of the Work to comply with the requirements of the GMP Documents; or~~  
3. ~~terms of special warranties required by the GMP Documents.~~ [Number not used.]

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§ 11.1.1 ~~The~~ After consultation with the Owner as to the insurance needs of the Project, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- 7. Claims for bodily injury or property damage arising out of completed operations; and
- 8. Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 9.18-9.18; and
- 9. Any other coverages agreed upon.

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§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

[Number not used.]

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The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Section 9.20, if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Section 9.20, if any, and the Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, them similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

...

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. ~~If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

...

§ 11.4.1 ~~The Owner shall have the right to require the Contractor to furnish bonds~~ Contractor must furnish bonds meeting the standards for such bonds stated in the South Carolina Consolidated Procurement Code covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the GMP Documents on the date of execution of the Contract.

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Payments due and unpaid under the GMP Documents shall bear interest from the date payment is due at ~~such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located~~ the United States Prime Rate as listed in the Eastern print edition of the Wall Street Journal as of the date the payment becomes overdue.

...

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with Article 13 within the time period specified by applicable law, ~~but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 12.6.~~ law.

...

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the ~~Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.~~ Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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...

§ 13.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost (where otherwise allowable) and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work profit.
- ...

§ 13.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties ~~and the Architect, if the Architect is not serving as the Initial Decision Maker,~~ of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

...

§ 13.2.6.1 ~~Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. [Number not used.]~~

...

§ 13.2.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines. [Number not used.]~~

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§ 13.3.2 The parties shall endeavor to resolve their Claims by mediation which, ~~unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Owner-Contractor Agreement, before an agreed-upon neutral.~~ A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation, writing. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration is stayed pursuant to this Section 13.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 13.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the ~~place where the Project is located, unless another location is a location~~ mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 13.4 ARBITRATION [Number not used.]

§ 13.4.1 ~~Any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the Owner and Contractor mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Owner-Contractor Agreement. A demand for arbitration shall be made in writing, delivered to the other parties, and filed with the~~

person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

~~§ 13.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 13.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 13.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Owner-Contractor Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~§ 13.4.4 CONSOLIDATION OR JOINDER~~

~~§ 13.4.4.1 The Owner and Contractor, at their individual discretion, may consolidate an arbitration conducted under Owner-Contractor Agreement with any other arbitration to which they are a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 13.4.4.2 The Owner and Contractor, at their individual discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 13.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 13.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under the Owner-Contractor Agreement.~~

## ***Certification of Document's Authenticity***

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:02:53 on 02/03/2015 under Order No. 0551642066\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A295™ – 2008, General Conditions of the Contract for Integrated Project Delivery, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)

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## Document A195™ – 2008

### *Standard Form of Agreement Between Owner and Contractor for Integrated Project Delivery*

AGREEMENT made as of the third day of February in the year Two-thousand Fifteen (2015).

*(In words, indicate day, month and year.)*

BETWEEN the Owner:

School District No. 2 of Spartanburg County, South Carolina

and the Contractor:

Thompson Turner Construction, a division of Thompson Construction Group, Inc.  
100 N. Main

Sumter, SC 29150

for the following Project:

*(Name, location and detailed description)*

New Elementary School No. 8 Project

The Architect:

Jumper Carter Sease Architects, P.A.

The Owner and Contractor agree as follows.

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A295™–2008, General Conditions of the Agreement for Integrated Project Delivery, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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2	OWNER'S RESPONSIBILITIES
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## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 THE WORK OF THIS CONTRACT

§ 1.1 The Contractor shall fully execute the Work described in the GMP Documents, except as specifically indicated in the GMP Documents to be the responsibility of others. The GMP Documents are defined in Article 1 of AIA Document A295™-2008, General Conditions Document of the Contract for Integrated Project Delivery, as modified for this Project, which is incorporated herein by reference.

§ 1.2 The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A295-2008.

### § 1.3 ADDITIONAL SERVICES PRIOR TO THE ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

§ 1.3.1 Prior to the establishment of the Guaranteed Maximum Price, the Contractor may provide Additional Services after execution of this Agreement without invalidating this Agreement. Except for services required due to the fault of the Contractor, any Services provided in accordance with this Section 1.3 shall entitle the Contractor to compensation pursuant to Section 4.1.2.

§ 1.3.2 Upon recognizing the need to perform the following Additional Services prior to the establishment of the Guaranteed Maximum Price, the Contractor shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Contractor shall not proceed to provide the following services until the Contractor receives the Owner's written authorization:

- .1 Services necessitated by a change in previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or Budget for the Work, or procurement method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or sustainability certification programs;
- .3 Materially changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner;
- .5 Preparing digital data, in a format other than previously agreed to, for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 [number not used]; or

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- .7 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Contractor is party thereto.

## ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner's responsibilities are as set forth in the accompanying A295-2008.

## ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 The Contractor and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Contractor intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 3.2 The Contractor and the Contractor's Subcontractors shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Contractor and the Contractor's Subcontractors.

§ 3.3 Upon execution of this Agreement, the Contractor grants to the Owner a nonexclusive license to use the Contractor's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Contractor shall obtain similar nonexclusive licenses from the Contractor's Subcontractors consistent with this Agreement. The license granted under this section permits the Owner to authorize the Architect and the Architect's consultants, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Contractor and Subcontractor(s) from all claims and causes of action arising from such uses. The Owner, will require any subsequent Contractor to agree to indemnify and hold harmless the Contractor and its Subcontractors from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the subsequent Contractor's use of the Instruments of Service under this Section 3.3.1. The Terms of this Section 3.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Article 7.

§ 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Contractor. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Contractor and Contractor's Subcontractors and consultants.

## ARTICLE 4 COMPENSATION

### § 4.1 SERVICES PROVIDED PRIOR TO ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

§ 4.1.1 For the Contractor's performance of services set forth in A295-2008 prior to the establishment of the Guaranteed Maximum Price (Pre-GMP Services), the Owner shall pay the Contractor as follows:

*(Insert amount of, or basis for, compensation for Pre-GMP Services or indicate the exhibit in which compensation is provided for.)*

0.25 % of the estimated Cost of Construction used for design.

§ 4.1.2 For Additional Services that may arise prior to the establishment of the Guaranteed Maximum Price, including those under Section 1.3, the Owner shall compensate the Contractor as follows:

*(Insert amount of, or basis for, compensation.)*

To be stated in the writings constituting Contractor's notice of the need for, and Owner's authorization of, the specific Additional Services at issue.

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§ 4.1.3 Compensation for Additional Services of the Contractor's Subcontractors when not included in Section 4.1.2, shall be the amount invoiced to the Contractor plus ten percent ( 10 %).

§ 4.1.4 The hourly billing rates for services of the Contractor and the Contractor's Subcontractors, if any, are set forth below. The rates shall be adjusted in accordance with the Contractor's and Contractor's Subcontractors' normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category

Rate

#### § 4.1.5 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 4.1.5.1 Expenses of Contractor's performance of Pre-GMP Services are included in the compensation for the Contractor's Pre-GMP Services established in § 4.1.1, and include expenses incurred by the Contractor and the Contractor's Subcontractors directly related to the Project, except the following, which shall be Reimbursable Expenses:

- .1 [number not used];
- .2 Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Express delivery services when in the best interest of the Project;
- .6 [number not used];
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 [number not used];
- .9 [number not used]; and
- .10 Other similar Project-related expenditures incurred in performance of Pre-GMP Services, where the expense is for extraordinary and unforeseeable expenses in a reasonable amount, so long as the expense was incurred for the advancement of the Project and not solely for the benefit of the Contractor or a Subcontractor.

§ 4.1.5.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Contractor and the Contractor's Subcontractors plus an administrative fee of ten percent ( 10 %) of the expenses incurred.

#### § 4.2 SERVICES PROVIDED AFTER ESTABLISHMENT OF THE GMP

§ 4.2.1 For the Contractor's performance of the Work after establishment of the Guaranteed Maximum Price, the Owner shall pay to the Contractor the Contract Sum in current funds. The Contract Sum consists of the Contractor's Fee plus the Cost of the Work as that term is defined in the A195-2008 Guaranteed Maximum Price Amendment to the Standard Form Agreement Between the Owner and Contractor for Integrated Project Delivery (GMP Amendment), the form of which is attached as Exhibit A.

§ 4.2.1.1 Contractor's Fee shall be determined as follows:

*(State a lump sum, percentage of the Cost of the Work or other provision for determining the Contractor's Fee.)*

Three and seventy-five hundredths percent (3.75%) of the Cost of the Work.

§ 4.2.2 Following the Owner and Contractor's acceptance of a Guaranteed Maximum Price pursuant to Section 7.10 of A295-2008, the Owner and Contractor shall execute the GMP Amendment amending this Agreement and setting forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Upon the execution of the GMP Amendment, the Contractor guarantees that the Contract Sum shall not to exceed the Guaranteed Maximum Price, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Contractor shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

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#### § 4.3 COMPENSATION FOR USE OF CONTRACTOR'S INSTRUMENTS OF SERVICE

If the Owner terminates the Contractor for its convenience under Section 7.1.5 or Section 7.2.4, or the Contractor terminates this Agreement under Section 7.1.3 or Section 7.2.1, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Contractor's Instruments of Service solely for purposes of the Project as follows:

One dollar (\$1.00).

#### ARTICLE 5 PAYMENTS

##### § 5.1 PAYMENTS FOR PRE-GMP SERVICES

###### § 5.1.1 [Not used.]

§ 5.1.2 Unless otherwise agreed, payments for Pre-GMP Services shall be made monthly in proportion to services performed. Payments are due and payable upon timely presentation of the Contractor's invoice in proper format and according to reasonable instructions of the Owner pertaining to Owner's financing draw schedule. Amounts unpaid thirty-five ( 35 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Contractor.  
*(Insert rate of monthly or annual interest agreed upon.)*

United States Prime Rate as published in the Eastern print edition of the Wall Street Journal on the first day the payment becomes overdue.

§ 5.1.3 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

##### § 5.2

##### PROGRESS PAYMENTS FOR CONSTRUCTION SERVICES AFTER GUARANTEED MAXIMUM PRICE ESTABLISHED

§ 5.2.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the GMP Documents.

§ 5.2.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

The parties may agree to a different schedule for processing Applications for Payment.

§ 5.2.3 Provided that an Application for Payment is received by the Architect not later than the seventh day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the last day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty-eight ( 28 ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.2.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.2.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the GMP Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.2.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the

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percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.2.7 The amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 9.21.3.9 of AIA Document A295-2008;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee. The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 4.2.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of three and one-half percent ( 3.5 %) from that portion of the Work that the Contractor self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 5.2.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.23.5 of AIA Document A295-2008.

§ 5.2.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.2.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 5.2.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

### § 5.3 FINAL PAYMENT

§ 5.3.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 9.25.2.2 of AIA Document A295-2008, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 5.3.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 5.3.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.23.5.1 of the AIA Document A295-2008. The time periods stated in this Section 5.3.2 supersede those stated in

Init.

Section 9.23.4.1 of the AIA Document A295-2008. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 5.3.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 13.2 of A295-2008. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 5.3.4 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment

§ 5.3.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs reimbursable costs to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 PRIOR TO ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

The Owner and Contractor shall resolve any claim or cause of action arising out of or relating to the Contractor's Pre-GMP Services pursuant to the terms and conditions set forth in Article 13 of the A295-2008 in its entirety..

### § 6.2 AFTER ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

§ 6.2.1 Any Claim arising out of or relating to the Project after establishment of the Guaranteed Maximum Price shall be subject to the terms and conditions set forth in Article 13 of the A295-2008 in its entirety.

### § 6.2.2 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 13.2 of AIA Document A295-2008, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

*(Paragraphs deleted)*

## ARTICLE 7 TERMINATION OR SUSPENSION

### § 7.1 TERMINATION OR SUSPENSION PRIOR TO ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

§ 7.1.1 If the Owner fails to make payments to the Contractor for Pre-GMP Services in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Contractor's option, cause for suspension of performance of services under this Agreement. If the Contractor elects to suspend services, the Contractor shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Contractor shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Contractor shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Contractor's services. The Contractor's compensation for the remaining Pre-GMP Phase services and the time schedules shall be equitably adjusted.

§ 7.1.2 If the Owner suspends the Project, the Contractor shall be compensated for Pre-GMP Services performed prior to notice of such suspension. When the Project is resumed, the Contractor's compensation for the remaining Pre-GMP Services and the time schedules shall be equitably adjusted.

§ 7.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Contractor, the Contractor may terminate this Agreement by giving not less than seven days' written notice.

§ 7.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 7.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Contractor for the Owner's convenience and without cause.

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§ 7.1.6 In the event of termination not the fault of the Contractor, the Contractor shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 7.1.7.

§ 7.1.7 Termination Expenses are in addition to compensation for the Contractor's Pre-GMP Services and include expenses directly attributable to termination for which the Contractor is not otherwise compensated.

§ 7.1.8 The Owner's rights to use the Contractor's Instruments of Service in the event of a termination of this Agreement are set forth Article 3 and Section 4.3 of this Agreement as well as the A295-2008 General Conditions of the IPD Agreements.

## § 7.2 TERMINATION OR SUSPENSION AFTER ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

### § 7.2.1 TERMINATION BY THE CONTRACTOR

§ 7.2.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, sub-Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.23.4.1 of A295-2008, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.2 of A295-2008.

§ 7.2.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, sub-Subcontractor or their agents or employees or any other persons or entities under direct or indirect contract with the Contractor, the Owner causes repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 7.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 7.2.1.3 If one of the reasons described in Section 7.2.1.1 or 7.2.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and the Contractor's recovery for such termination shall be the same as if the Owner terminated the contract for convenience pursuant to § 7.2.4.

§ 7.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations as set forth herein and A295-2008 with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate this Agreement and recover from the Owner as provided in Section 7.2.1.3.

### § 7.2.2 TERMINATION BY THE OWNER FOR CAUSE

§ 7.2.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the GMP Documents.

§ 7.2.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and

Init.

after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 7.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 7.2.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 7.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 7.2.2.4.1 If the Owner terminates the Contract for cause, the amount, if any, to be paid to the Contractor under Section 7.2.2.4 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.2.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

#### § 7.2.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 7.2.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 7.2.3.2 Subject to the limits on damages for delay stated in the General Conditions, the Contract Sum and Contract Time shall be adjusted for contractually allowable increases in the cost and time caused by suspension, delay or interruption as described in Section 7.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible;
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 7.2.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 7.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 7.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 7.2.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

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§ 7.2.5 In the event of any termination by the Owner, the Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

#### ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 8.2 Terms in this Agreement shall have the same meaning as those in A295-2008, as amended.

§ 8.3 The Owner and Contractor, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Contractor shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 8.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Contractor.

§ 8.5 If the Contractor or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

#### ARTICLE 9 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

The parties agree to Liquidated Damages of five hundred dollars (\$500) per day that the project is not substantially complete in excess of the Contract Time; said amount being an estimate of the Owner's damages for loss of beneficial occupancy and resulting costs and inefficiencies in the preparation of the building for the 2016-2017 school year.

#### ARTICLE 10 SCOPE OF THE AGREEMENT

§ 10.1 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Contractor.

§ 10.2 The following documents comprise the Agreement:

- .1 AIA Document A195-2008, Standard Form of Agreement Between Owner and Contractor for Integrated Project Delivery
- .2 AIA Document A295-2008, General Conditions of the Contract for Integrated Project Delivery
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

- .4 Other documents:  
(List other documents, if any, forming part of the Agreement.)

Init.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

For the Board of Trustees:  
Dr. Scott Mercer  
Superintendent

(Printed name and title)

CONTRACTOR (Signature)

Hal Turner  
Vice President

(Printed name and title)

Init.

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(1835235702)

## Additions and Deletions Report for AIA® Document A195™ – 2008

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:02:34 on 02/03/2015.

### PAGE 1

AGREEMENT made as of the third day of February in the year Two-thousand Fifteen (2015).

...

(Name, legal status, address and other information)  
School District No. 2 of Spartanburg County, South Carolina

...

(Name, legal status, address and other information)  
Thompson Turner Construction, a division of Thompson Construction Group, Inc.  
100 N. Main  
Sumter, SC 29150

...

New Elementary School No. 8 Project

...

The Architect:  
(Name, legal status, address and other information)

Jumper Carter Sease Architects, P.A.

### PAGE 2

§ 1.1 The Contractor shall fully execute the Work described in the GMP Documents, except as specifically indicated in the GMP Documents to be the responsibility of others. The GMP Documents are defined in Article 1 of AIA Document A295™–2008, General Conditions Document of the Contract for Integrated Project Delivery, as modified for this Project, which is incorporated herein by reference.

...

- .1 Services necessitated by a change in ~~the Initial Information set forth in A295–2008~~, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or Budget for the Work, or procurement method;

...

- ..3 ~~Changing-Materially changing~~ or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;

...

- ..6 Preparation for, and attendance at, a public presentation, meeting or hearing other than those required under A295-2008; ~~[number not used]~~; or

#### PAGE 3

§ 3.3 Upon execution of this Agreement, the Contractor grants to the Owner a nonexclusive license to use the Contractor's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Contractor shall obtain similar nonexclusive licenses from the Contractor's Subcontractors consistent with this Agreement. The license granted under this section permits the Owner to authorize the Architect and the Architect's consultants, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. ~~If the Contractor rightfully terminates this Agreement for cause as provided in Section 7.1.4, the license granted in this Section 3.3 shall terminate.~~

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Contractor and Subcontractor(s) from all claims and causes of action arising from such uses. The Owner, ~~to the extent permitted by law, further agrees will require any subsequent Contractor to agree~~ to indemnify and hold harmless the Contractor and its Subcontractors from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the ~~Owner's subsequent Contractor's~~ use of the Instruments of Service under this Section 3.3.1. The Terms of this Section 3.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Article 7.

...

0.25 % of the estimated Cost of Construction used for design.

...

To be stated in the writings constituting Contractor's notice of the need for, and Owner's authorization of, the specific Additional Services at issue.

§ 4.1.3 Compensation for Additional Services of the Contractor's Subcontractors when not included in Section 4.1.2, shall be the amount invoiced to the Contractor plus ~~percent (—%), or as otherwise stated below:~~

ten percent ( 10 %).

#### PAGE 4

§ 4.1.5.1 ~~Reimbursable Expenses are in addition to Expenses of Contractor's performance of Pre-GMP Services are included in the~~ compensation for the Contractor's Pre-GMP Services established in § 4.1.1, and include expenses incurred by the Contractor and the Contractor's Subcontractors directly related to the Project, as follows: ~~except the following, which shall be Reimbursable Expenses:~~

- ..1 ~~Transportation and authorized out of town travel and subsistence; [number not used];~~
- ..2 ~~Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;~~

...

- ..5 ~~Postage, handling and delivery; Express delivery services when in the best interest of the Project;~~
- ..6 ~~Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; [number not used];~~

- ...
- .8 ~~All taxes levied on professional services and on reimbursable expenses; [number not used];~~
  - .9 ~~Site office expenses; [number not used]; and~~
  - .10 Other similar Project-related expenditures incurred in performance of Pre-GMP Services. Services, where the expense is for extraordinary and unforeseeable expenses in a reasonable amount, so long as the expense was incurred for the advancement of the Project and not solely for the benefit of the Contractor or a Subcontractor.

§ 4.1.5.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Contractor and the Contractor's Subcontractors plus an administrative fee of ten percent ( 10 %) of the expenses incurred.

...

Three and seventy-five hundredths percent (3.75%) of the Cost of the Work.

PAGE 5

One dollar (\$1.00).

...

§ 5.1.1 ~~An initial payment of (\$ ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice for Pre-GMP Services. [Not used.]~~

§ 5.1.2 Unless otherwise agreed, payments for Pre-GMP Services shall be made monthly in proportion to services performed. Payments are due and payable upon ~~presentation of the Contractor's invoice. Amounts unpaid~~ ( timely presentation of the Contractor's invoice in proper format and according to reasonable instructions of the Owner pertaining to Owner's financing draw schedule. Amounts unpaid thirty-five ( 35 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Contractor.

...

%—United States Prime Rate as published in the Eastern print edition of the Wall Street Journal on the first day the payment becomes overdue.

...

The parties may agree to a different schedule for processing Applications for Payment.

§ 5.2.3 Provided that an Application for Payment is received by the Architect not later than the seventh day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the last day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty-eight ( 28 ) days after the Architect receives the Application for Payment.

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- .3 ~~Add the Contractor's Fee, less retainage of percent (—%). Fee.~~ The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 4.2.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .4 Subtract retainage of three and one-half percent ( 3.5 %) from that portion of the Work that the Contractor self-performs;

PAGE 7

§ 5.3.4 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Payment

...

The Owner and Contractor shall resolve any claim or cause of action arising out of or relating to the Contractor's Pre-GMP Services pursuant to the mediation and arbitration provisions set forth in Sections 13.3 and 13.4 of A295-2008, terms and conditions set forth in Article 13 of the A295-2008 in its entirety..

...

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

...

§ 7.1.2 If the Owner suspends the Project, the Contractor shall be compensated for Pre-GMP Services performed prior to notice of such suspension. When the Project is resumed, the Contractor shall be compensated for expenses incurred in the interruption and resumption of the Contractor's services. The Contractor's compensation for the remaining Pre-GMP Services and the time schedules shall be equitably adjusted.

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§ 7.1.7 Termination Expenses are in addition to compensation for the Contractor's Pre-GMP Services and include expenses directly attributable to termination for which the Contractor is not otherwise compensated, ~~plus an amount for the Contractor's anticipated profit on the value of the Pre-GMP Services not performed by the Contractor compensated.~~

...

§ 7.2.1.3 If one of the reasons described in Section 7.2.1.1 or 7.2.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and ~~recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages, the Contractor's recovery for such termination shall be the same as if the Owner terminated the contract for convenience pursuant to § 7.2.4.~~

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§ 7.2.3.2 ~~The Subject to the limits on damages for delay stated in the General Conditions, the~~ Contract Sum and Contract Time shall be adjusted for contractually allowable increases in the cost and time caused by suspension, delay or interruption as described in Section 7.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

...

§ 7.2.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such ~~termination, along with reasonable overhead and profit on the Work not executed.~~termination.

PAGE 10

§ 8.1 This Agreement shall be governed by the law of the place where the Project is ~~located, subject to the Federal Arbitration Act as applicable.~~located.

§ 8.2 Terms in this Agreement shall have the same meaning as those in ~~A295-2008.~~A295-2008, as amended.

...

The parties agree to Liquidated Damages of five hundred dollars (\$500) per day that the project is not substantially complete in excess of the Contract Time; said amount being an estimate of the Owner's damages for loss of beneficial occupancy and resulting costs and inefficiencies in the preparation of the building for the 2016-2017 school year.

PAGE 11

For the Board of Trustees:  
Dr. Scott Mercer  
Superintendent

Hal Turner  
Vice President

---

## ***Certification of Document's Authenticity***

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:02:34 on 02/03/2015 under Order No. 0551642066\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A195™ – 2008, Standard Form of Agreement Between Owner and Contractor for Integrated Project Delivery, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)





**AIA®**

# Document A195™ – 2008 Exhibit A

## Guaranteed Maximum Price Amendment

This Exhibit is incorporated into the accompanying Agreement dated the Sixteenth day of July in the year two thousand fifteen (2015).  
(In words, indicate day, month and year.)

for the following PROJECT:  
(Name and location or address)

Spartanburg 2 – Shoally Creek Elementary School Project (New Elementary School No. 8) – FULL SCOPE.

NOTE: THIS GMP AGREEMENT INCLUDES AND SUPERSEDES THE EARLIER SITE PACKAGE GMP AMENDMENT BETWEEN THE PARTIES.

### ARTICLE A.1

#### § A.1.1 GUARANTEED MAXIMUM PRICE

Pursuant to Section 4.2.2 of the Agreement, the Owner and Contractor hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Contractor, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Contractor's Fee plus the Cost of the Work, as that term is defined in Article A.3 of this Amendment.

§ A.1.1.1 The Contract Sum is guaranteed by the Contractor not to exceed twenty three million two hundred twenty one thousand eight hundred fifty one dollars (\$23,221,851.00), subject to additions and deductions by Change Order as provided in the GMP

(Paragraphs deleted)

Documents and inclusive of soft costs and compensation as itemized.

#### § A.1.1.2 ITEMIZED STATEMENT OF THE GUARANTEED MAXIMUM PRICE

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Contractor's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide below or reference an attachment.)

Attachment: "Shoally Creek Schedule of Values / GMP Schedule of Values  
Job# 5-17-1410, July 6, 2015"

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the GMP Documents and are hereby accepted by the Owner:  
(State the numbers or other identification of accepted alternates. If the GMP Documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

Attachment: "Shoally Creek Schedule of Values / GMP Schedule of Values  
Job# 5-17-1410, July 6, 2015"

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:  
(Identify allowance and state exclusions, if any, from the allowance price.)

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A295™–2008, General Conditions of the Agreement for Integrated Project Delivery, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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(1970818886)

Item	Price
Attachment: "Shoally Creek Schedule of Values / GMP Schedule of Values Job# 5-17-1410, July 6, 2015"	

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

[number not used]

§ A.1.1.6 To the extent that the GMP Documents require further development by the Architect and Contractor, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the GMP Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
A295 as executed under the Agreement.			

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

See "Shoally Creek Elementary List of Drawings and Specifications 7/14/2015" (attached).

Section	Title	Date	Pages
---------	-------	------	-------

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

See "Shoally Creek Elementary List of Drawings and Specifications 7/14/2015" (attached).

## ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

July 22, 2016.

§ A.2.2 The issuance dates for the Implementation Documents upon which the anticipated Substantial Completion date relies are as follows:

Document	Issuance Date
TBD	

## ARTICLE A.3

### § A.3.1 COST OF THE WORK

§ A.3.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Section A.3.1.

§ A.3.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

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(1970818886)

### § A.3.1.3 LABOR COSTS

§ A.3.1.3.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.3.1.3.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(Table deleted)(Paragraph deleted)*

§ A.3.1.3.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.3.1.3.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections A.3.1.3.1 through A.3.1.3.3.

§ A.3.1.3.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval.

### § A.3.1.4 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

### § A.3.1.5 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ A.3.1.5.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.3.1.5.2 Costs of materials described in the preceding Section A.3.1.5.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § A.3.1.6 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ A.3.1.6.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ A.3.1.6.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.3.1.6.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.3.1.6.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ A.3.1.6.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

### § A.3.1.7 MISCELLANEOUS COSTS

§ A.3.1.7.1 Premiums for that portion of insurance and bonds required by the GMP Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the GMP Documents, with the Owner's prior approval.

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§ A.3.1.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ A.3.1.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the GMP Documents to pay.

§ A.3.1.7.4 Fees of laboratories for tests required by the GMP Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 12.4.3 of AIA Document A295™-2008 or by other provisions of the GMP Documents, and which do not fall within the scope of Section A.3.1.8.3.

§ A.3.1.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the GMP Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the GMP Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 9.17 of A295™-2008 or other provisions of the GMP Documents, then they shall not be included in the Cost of the Work.

§ A.3.1.7.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ A.3.1.7.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the GMP Documents.

§ A.3.1.7.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ A.3.1.7.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ A.3.1.7.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

#### § A.3.1.8 OTHER COSTS AND EMERGENCIES

§ A.3.1.8.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.3.1.8.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 9.24.4 of A295-2008.

§ A.3.1.8.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

#### § A.3.1.9 RELATED PARTY TRANSACTIONS

§ A.3.1.9.1 For purposes of this Section A.3.1.9, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ A.3.1.9.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of

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the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Section A.3.4. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.3.4.

#### § A.3.2 COSTS NOT INCLUDED IN THE COST OF THE WORK

§ A.3.2.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section A.3.1.3. or as may otherwise be provided;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.3.1;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section A.3.1.8.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.3.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

#### § A.3.3 DISCOUNTS, REBATES AND REFUNDS

§ A.3.3.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ A.3.3.2 Amounts that accrue to the Owner in accordance with the provisions of Section A.3.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § A.3.4 SUBCONTRACTS AND OTHER AGREEMENTS

§ A.3.4.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the other Project Participants. The Project Participants shall then determine which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ A.3.4.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the GMP Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.3.4.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Section A.3.5, below.

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§ A.3.5 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

| Dr. Scott Mercer, Superintendent  
(Printed name and title)

\_\_\_\_\_  
CONTRACTOR (Signature)

Hal Turner, Vice President  
(Printed name and title)

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## Additions and Deletions Report for AIA<sup>®</sup> Document A195<sup>™</sup> – 2008 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:44:14 on 07/21/2015.

### PAGE 1

This Exhibit is incorporated into the accompanying Agreement dated the Sixteenth day of July in the year two thousand fifteen (2015).

...

*(Name and location or address)*

Spartanburg 2 – Shoally Creek Elementary School Project (New Elementary School No. 8) – FULL SCOPE.

NOTE: THIS GMP AGREEMENT INCLUDES AND SUPERSEDES THE EARLIER SITE PACKAGE GMP AMENDMENT BETWEEN THE PARTIES.

...

§ A.1.1.1 The Contract Sum is guaranteed by the Contractor not to exceed twenty three million two hundred twenty one thousand eight hundred fifty one dollars (\$ \$23,221,851.00), subject to additions and deductions by Change Order as provided in the GMP Documents.

*(Insert specific provisions if the Contractor is to participate in any savings.)*

Documents and inclusive of soft costs and compensation as itemized.

...

Attachment: "Shoally Creek Schedule of Values / GMP Schedule of Values  
Job# 5-17-1410, July 6, 2015"

...

Attachment: "Shoally Creek Schedule of Values / GMP Schedule of Values  
Job# 5-17-1410, July 6, 2015"

### PAGE 2

Attachment: "Shoally Creek Schedule of  
Values / GMP Schedule of Values Job#  
5-17-1410, July 6, 2015"

...

[number not used]

...

A295 as executed under  
the Agreement.

...

See "Shoally Creek Elementary List of Drawings and Specifications 7/14/2015" (attached).

...

See "Shoally Creek Elementary List of Drawings and Specifications 7/14/2015" (attached).

Number	Title	Date
--------	-------	------

...

July 22, 2016.

...

TBD

PAGE 3

*(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, set forth below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

Person included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

PAGE 6

Dr. Scott Mercer, Superintendent

Hal Turner, Vice President



## ***Certification of Document's Authenticity***

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:44:14 on 07/21/2015 under Order No. 0239586208\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A195™ – 2008 Exhibit A, Guaranteed Maximum Price Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)

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**AIA®**

## Document B195™ – 2008

### *Standard Form of Agreement Between Owner and Architect for Integrated Project Delivery*

AGREEMENT made as of the Fourth day of February in the year Two Thousand Fifteen  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

School District No. 2 of Spartanburg County, South Carolina

and the Architect:  
(Name, legal status, address and other information)

Jumper Carter Sease Architects P.A.  
412 Meeting St  
West Columbia, SC 29169-7533

for the following Projects:  
(Name, location and detailed description)

1. A new Elementary School No. 8 on property to be acquired by the Owner.
2. Indefinite Delivery (two-year term)

for which Project the Contractor is:  
(Name, legal status, address and other information)

to be determined

The Owner and Architect agree as follows.

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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## TABLE OF ARTICLES

1	ARCHITECT'S SERVICES AND RESPONSIBILITIES
2	OWNER'S RESPONSIBILITIES
3	COPYRIGHTS AND LICENSES
4	COMPENSATION
5	DISPUTE RESOLUTION
6	TERMINATION OR SUSPENSION
7	MISCELLANEOUS PROVISIONS
8	SPECIAL TERMS AND CONDITIONS
9	SCOPE OF THE AGREEMENT

### ARTICLE 1 ARCHITECT'S SERVICES AND RESPONSIBILITIES

§ 1.1 The Architect shall provide the professional services set forth in AIA Document A295™-2008 General Conditions of the Contract for Integrated Project Delivery, which is incorporated herein by reference, except as specifically indicated to be the responsibility of others. Such services shall include usual and customary structural, mechanical, and electrical engineering services, and other facility design-related services typically and customarily provided in the scope of complete architectural and engineering services for a South Carolina public school renovation and additions project conducted in accordance with the Owner's programmatic information and budget.

§ 1.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 1.3 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.4 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

Not specified by Owner.

.2 Automobile Liability

Not specified by Owner.

.3 Workers' Compensation

Not specified by Owner

.4 Professional Liability

One million dollars (\$1,000,000) minimum general aggregate and per occurrence.

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## § 1.5 ADDITIONAL SERVICES

§ 1.5.1 Additional Services are services clearly beyond the scope of Basic Services, and may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided entitle the Architect to compensation pursuant to Section 4.2 and an appropriate adjustment in the Architect's schedule.

§ 1.5.2 Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner in writing with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide Additional Services until the Architect receives the Owner's written authorization. Each agreement for "additional services" must be reduced to a written "Contract Amendment" to this Agreement.

.1  
(Paragraphs deleted)

While the precise scope remains to be defined, the parties are basing the Basic Services and the compensation for Basic Services on a mutual understanding of the general scope of the project, one goal of which is to conserve time and effort by reliance upon previous experiences with very similar designs by the Architect and its Consultants. Because the Fee is a fixed sum, is agreed that with a prototype or existing plan previously developed by a firm major scope changes, or significant customization of the design, may require Additional Services of design professionals.

§ 1.5.3  
(Paragraphs deleted)  
[Number not used.]

§ 1.5.4 The Architect shall provide Construction Phase services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Periodic visits to the site at appropriate intervals by the Architect and professional engineers over the duration of the Project during construction
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the GMP Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion

§ 1.5.5 [Number not used.]

## ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner's responsibilities are as set forth in the accompanying A295-2008.

## ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 3.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license

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User Notes:

(1632393829)

granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner will require a subsequently-retained design professional to agree to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the subsequently-retained design professional's use of the Instruments of Service under this Section 3.3.1. The terms of this Section 3.3.1 shall not apply if the Owner rightfully terminates this agreement for cause under Article 6.

§ 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

#### ARTICLE 4 COMPENSATION

§ 4.1 The Owner shall compensate the Architect for services described in Section 1.1 as set forth below.  
(Insert amount of, or basis for, compensation or indicate the exhibit in which compensation is provided for.)

The Basic Services Fee is five percent (5%) of the Cost of the Work.

§ 4.2 For Additional Services that may arise during the course of the Project, including those under Section 1.5, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation.)

On an agreed basis. In the event no agreement can be reached, then *quantum meruit* principles will apply to determine a reasonable amount of compensation for the services in the circumstances.

Further, the design contingency will include the risk of unanticipated additional design professional services required to comply with unexpectedly burdensome requirements caused by authorities with jurisdiction over the design.

§ 4.3 Compensation for Additional Services of the Architect's consultants when not included in Section 4.2, shall be the amount invoiced to the Architect plus ten percent ( 10 %).

§ 4.4 Where compensation for Services described in Section 1.1 is based on a stipulated sum or percentage of the Guaranteed Maximum Price, the compensation for each phase of services shall be as follows:

Conceptualization Phase:	Ten	percent (	10	%)
Criteria Design Phase:	Twenty	percent (	20	%)
Detailed Design Phase:	Twenty	percent (	20	%)
Implementation Documents	Thirty	percent (	30	%)
Phase:				
Construction Phase:	Fifteen	percent (	15	%)
Closeout Phase:	Five	percent (	5	%)
<hr/>				
Total Basic Compensation	one hundred	percent (	100	%)

§ 4.5 The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the construction of the Work commenced. Eighty percent (80%) of the Basic Services Fee will be earned on alternates fully designed but not built.

Init.

§ 4.6 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Exhibit is attached.

Employee or Category

Rate

#### § 4.7 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 4.7.1 Reimbursable Expenses for performing Basic Services are deemed to be included in the compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows: .

*(Paragraphs deleted)*

1 Fees paid for securing approval of authorities having jurisdiction over the Project;

*(Paragraphs deleted)*

.2 Third-party renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

.3 Other similar Project-related expenditures.

*(Paragraphs deleted)*

.4 Reimbursable costs, excluding printing of documents for construction, are capped at \$10,000.00.

.5 The Owner will arrange with the Contractor for the production of bidding documents.

§ 4.7.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of ten percent ( 10 %) of the expenses incurred.

#### § 4.8 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 6.5, or the Architect terminates this Agreement under Section 6.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of the Project as follows:

One dollar (\$1.00).

#### § 4.9 PAYMENTS TO THE ARCHITECT

§ 4.9.1 [Number not used].

§ 4.9.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. *(Insert rate of monthly or annual interest agreed upon.)*

United States Prime Rate as published in the Eastern print edition of the Wall Street Journal on the first day the payment becomes overdue.

§ 4.9.3 . No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which the Owner has reasonable cause to hold pending resolution of a matter in which the Architect may bear at least partial responsibility, and for which the Owner has given a written explanation and set aside the disputed funds pending resolution of the dispute. Further, the Owner may delay any pending payment to the Architect until the Architect satisfactorily cures specific instances of (1) failure to adhere to the schedule for the Architect's work or (2) other non-responsiveness of the Architect to the needs of the Project.

§ 4.9.4 Records of Reimbursable Expenses that are to be invoiced to Owner, and of any services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

Init.

## ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 The Owner and Architect shall resolve any claim or cause of action arising out of or relating to this Agreement pursuant to the provisions set forth in Article 13 of A295-2008.

§ 5.2 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law.

§ 5.3 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in A295-2008. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 5.3.1 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 6.7.

## ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 If the Owner fails to make payments properly and legally due to the Architect in accordance with this Agreement, such failure shall be considered cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give twenty-one (21) days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 6.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 6.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 6.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 6.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 6.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 6.7.

§ 6.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

§ 6.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 4.8 of this Agreement as well as the A295-2008.

## ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 7.2 Terms in this Agreement shall have the same meaning as those in AIA Document A295-2008.

Init.

§ 7.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 7.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 7.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 7.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

## ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 8.1 The principal Architect with whom the Owner has contracted shall remain the principal contact relative to this Agreement, shall oversee the services rendered under this Agreement by his/her representative, and shall serve as the primary contact for issues or concerns related to the quality of delivered services by such representative. With the approval of the Owner, the Architect shall designate a representative authorized to act on behalf of the Architect with respect to the Project. The designated representative shall not be changed without the Owner's written consent, which consent shall not be unreasonably withheld.

§ 8.2 The Architect shall comply with the Design Criteria established and required by the South Carolina School Facilities Planning and Construction Guide. Architect shall contact water, sewer and other applicable utility authorities during the design phase to verify that its design complies with such authorities' requirements.

§ 8.3 The Architect shall prepare and distribute conference memoranda, meeting minutes, summaries of telephone conversations, documentation of site visits and site visit reports (with photographs) to maintain a comprehensive record of the Project. The field report of each Architect and/or consultant site visit, indicating the personnel visiting, the date and duration of the visit, the work observed, and deficiencies noted, shall be submitted electronically within three (3) business days of the field visit.

§ 8.4 Prompt written notice shall be given by the Architect to the Owner if the Architect becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

§ 8.5 The Architect will make presentations to the Board of Trustees as requested by the Owner.

Init.



§ 8.6 The Architect shall cooperate with any professional consultants or advisors retained by the Owner to assist the Owner with its role as owner.

§ 8.7 The Architect's cost of overnight delivery, mailing and/or delivering submittals, reports, or other documents to the appropriate parties in a timely manner when the Architect is required to respond, return, or transmit any document by the Contract Documents, is the responsibility of the Architect and included in the Basic Services Compensation.

§ 8.8 The Architect will serve as an advisor to the Owner's Selection Committee for the selection of the General Contractor(s), and in this capacity will (1) review and comment on the responses to the Owner's solicitation for the same in collaboration with the Owner's Representative and the Owner's Building Program Consultant, (2) attend meetings of the Selection Committee upon request, and (3) participate in any interviews of the respondents and any site visits to respondents' prior work, upon request of the Selection Committee,

§ 8.9 As part of the Basic Services provided by the Architect, during the eleventh (11th) month after the Date(s) of Substantial Completion of each Phase, the Architect shall visit the Project to review the Work and shall prepare a report to be issued to the Owner and Contractor, indicating Work to be corrected and warranty issues to be addressed by the Contractor. The report must be delivered by the Architect to the Contractor prior to the expiration of the Contractor's correction period. The Architect shall assist the Owner in taking necessary action to see that the deficiencies are corrected.

§ 8.10 Architect shall observe and provide to Owner a written report of the Contractor's checkout of utilities, operational systems and equipment for readiness and their start-up and testing.

§ 8.11 [Number not used.]

§ 8.12 Venue for any suit, action or proceeding arising out of or relating to the Agreement shall be proper only in the Court of Common Pleas for Spartanburg County, State of South Carolina. The Architect and the Architect's consultants and the Owner hereby waive and disclaim any and all right to a jury trial on any controversy arising from this Agreement. Architect and the Architect's consultants agree to be joined with every other party deemed necessary by the Owner for the full and proper examination, settlement or judgment of each dispute, claim, contract controversy, or civil action, whether in mediation, proceedings under the Owner's Procurement Code, or any court of competent jurisdiction. This paragraph is procedural only, and such joinder does not affect Architect's substantive legal position with regard to any other party.

§ 8.13 [Number not used.]

§ 8.14 The terms and conditions of this Agreement shall be governed by the Owner's Procurement Code and the laws of the State of South Carolina, which shall include, but not be limited to, the Architect being authorized and/or licensed to do business in the State of South Carolina. Acceptance of this Agreement the Architect agrees to subject himself/herself to the jurisdiction and process of the Owner's Procurement Code and the courts of the State of South Carolina as to all matters and disputes arising or to arise under this Agreement and the performance thereof. Any legal proceeding arising out of or relating to this Agreement shall include by consolidation, joinder, or joint filing any additional person or entity not a party to this Agreement to the extent necessary to the final resolution of the matter in controversy.

§ 8.15 The Owner shall have the right to audit the books and records of the Architect to the extent that the books and records relate to the performance of this Agreement and shall include all pricing data, change order or Agreement modifications for changes in cost. Such books and records related to this Agreement and to the Project files for those Projects covered under this agreement shall be maintained by the Architect for a period of three years from the date of final payment under this Agreement. This requirement shall apply to any Consultant performing services under the Architect's direction.

## ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

Init.

§ 9.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B195–2008, Standard Form Agreement Between Owner and Architect for an Integrated Project
- .2 AIA Document A295–2008, General Conditions of the Contract for Integrated Project Delivery
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 Other documents:  
*(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)*

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

On Authority of the Board of Trustees  
By: Dr. Scott Mercer  
Its: Superintendent  
*(Printed name and title)*

ARCHITECT *(Signature)*

Todd Sease, AIA  
Principal

*(Printed name and title)*

Init.

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## Additions and Deletions Report for AIA® Document B195™ – 2008

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:44:30 on 02/04/2015.

### PAGE 1

AGREEMENT made as of the Fourth day of February in the year Two Thousand Fifteen

...

School District No. 2 of Spartanburg County, South Carolina

...

Jumper Carter Sease Architects P.A.  
412 Meeting St  
West Columbia, SC 29169-7533

for the following ~~Project~~Projects:

...

1. A new Elementary School No. 8 on property to be acquired by the Owner.
2. Indefinite Delivery (two-year term)

...

to be determined

### PAGE 2

§ 1.1 The Architect shall provide the professional services set forth in AIA Document A295™–2008 General Conditions of the Contract for Integrated Project Delivery, which is incorporated herein by reference, except as specifically indicated to be the responsibility of others. Such services shall include usual and customary structural, mechanical, and electrical engineering ~~services~~services, and other facility design-related services typically and customarily provided in the scope of complete architectural and engineering services for a South Carolina public school renovation and additions project conducted in accordance with the Owner's programmatic information and budget.

...

Not specified by Owner.

...

Not specified by Owner.

...

Not specified by Owner

One million dollars (\$1,000,000) minimum general aggregate and per occurrence.

PAGE 3

§ 1.5.1 Additional Services are services clearly beyond the scope of Basic Services, and may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 1.5 shall entitle the Architect to compensation pursuant to Section 4.2 and an appropriate adjustment in the Architect's schedule.

§ 1.5.2 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner in writing with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services Additional Services until the Architect receives the Owner's written authorization: written authorization. Each agreement for "additional services" must be reduced to a written "Contract Amendment" to this Agreement.

- .1 ~~Services necessitated by a change in the Initial Information set forth in A295-2008, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement method;~~
- .2 ~~Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or sustainability certification programs;~~
- .3 ~~Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;~~
- .4 ~~Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;~~
- .5 ~~Preparing digital data, in a format other than previously agreed to, for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~
- .6 ~~Preparation of design and documentation for changes the Owner requests after acceptance of the Guaranteed Maximum Price;~~
- .7 ~~Preparation for, and attendance at, a public presentation, meeting or hearing;~~
- .8 ~~Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;~~
- .9 ~~Evaluation of the qualifications of bidders or persons providing proposals;~~
- .10 ~~Consultation concerning replacement of Work resulting from fire or other cause during construction;~~  
~~or~~
- .11 ~~Assistance to the Initial Decision Maker, if other than the Architect. While the precise scope remains to be defined, the parties are basing the Basic Services and the compensation for Basic Services on a mutual understanding of the general scope of the project, one goal of which is to conserve time and effort by reliance upon previous experiences with very similar designs by the Architect and its Consultants. Because the Fee is a fixed sum, is agreed that with a prototype or existing plan previously developed by a firm major scope changes, or significant customization of the design, may require Additional Services of design professionals.~~

§ 1.5.3 ~~To avoid a delay on the Project after the establishment of the Guaranteed Maximum Price, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:~~

- .1 ~~Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;~~
- .2 ~~Responding to the Contractor's requests for information that are not prepared in accordance with the GMP Documents or where such information is available to the Contractor from a careful study and~~

- comparison of the GMP Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- ~~3~~ Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
  - ~~4~~ Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
  - ~~5~~ To the extent the Architect's services required by Section 1.1 are affected, providing Construction Phase services 60 days after the date of Substantial Completion of the Work. [Number not used.]

...

1. Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
2. ~~(—)~~ Periodic visits to the site at appropriate intervals by the Architect and professional engineers over the duration of the Project during construction
3. Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the GMP Documents
4. Two ( 2 ) inspections for any portion of the Work to determine final completion

§ 1.5.5 If the services covered by this Agreement have not been completed within ~~(—)~~ months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services. [Number not used.]

...

§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. ~~If the Architect rightfully terminates this Agreement for cause as provided in Section 6.4, the license granted in this Section 3.3 shall terminate.~~

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, ~~to the extent permitted by law, further agrees Owner will require a subsequently-retained design professional to agree to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's subsequently-retained design professional's use of the Instruments of Service under this Section 3.3.1.~~ The terms of this Section 3.3.1 shall not apply if the Owner rightfully terminates this agreement for cause under Article 6.

#### PAGE 4

The Basic Services Fee is five percent (5%) of the Cost of the Work.

...

On an agreed basis. In the event no agreement can be reached, then quantum meruit principles will apply to determine a reasonable amount of compensation for the services in the circumstances.

Further, the design contingency will include the risk of unanticipated additional design professional services required to comply with unexpectedly burdensome requirements caused by authorities with jurisdiction over the design.

§ 4.3 Compensation for Additional Services of the Architect's consultants when not included in Section 4.2, shall be the amount invoiced to the Architect plus percent (—%), or as otherwise stated below:

ten percent ( 10 %).

...

Conceptualization Phase:	Ten	percent (	10	%)
Criteria Design Phase:	Twenty	percent (	20	%)
Detailed Design Phase:	Twenty	percent (	20	%)
Implementation Documents Phase:	Thirty	percent (	30	%)
Construction Phase:	Fifteen	percent (	15	%)
Closeout Phase:	Five	percent (	5	%)

...

§ 4.5 When compensation is based on a percentage of the Guaranteed Maximum Price, compensation for services performed prior to establishment of the Guaranteed Maximum Price will be based upon the most recent Contractor's Estimate, as that term is defined in Section 4.2.3 of A295 - 2008. When compensation for Services described in Section 1.1 is based on a percentage of the Guaranteed Maximum Price and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 4.4 based on (1) the Guaranteed Maximum Price, or (2) until such time as the Guaranteed Maximum Price is established, the Owner's most recent Budget for the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the construction of the Work commenced. Eighty percent (80%) of the Basic Services Fee will be earned on alternates fully designed but not built.

PAGE 5

Exhibit is attached.

...

- § 4.7.1 Reimbursable Expenses are in addition to for performing Basic Services are deemed to be included in the compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows: .
- ~~.1 Transportation and authorized out of town travel and subsistence;~~
  - ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;~~
  - ~~.3 Fees paid for securing approval of authorities having jurisdiction over the Project;~~
  - ~~.4 Printing, reproductions, plots, standard form documents;~~
  - ~~.5 Postage, handling and delivery;~~
  - ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
  - ~~.7 Renderings, .2 Third-party renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;~~
  - ~~.3 Other similar Project-related expenditures.~~
  - ~~.8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;~~
  - ~~.9 All taxes levied on professional services and on reimbursable expenses;~~
  - ~~.10 Site office expenses; and~~
  - ~~.11 Other similar Project-related expenditures. .4 Reimbursable costs, excluding printing of documents for construction, are capped at \$10,000.00.~~
  - .5 The Owner will arrange with the Contractor for the production of bidding documents.

§ 4.7.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of ten percent ( 10 %) of the expenses incurred.

...

One dollar (\$1.00).

...

§ 4.9.1 An initial payment of (\$ ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice. [Number not used].

§ 4.9.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

%—United States Prime Rate as published in the Eastern print edition of the Wall Street Journal on the first day the payment becomes overdue.

§ 4.9.3 ~~The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding, other than those for which the Owner has reasonable cause to hold pending resolution of a matter in which the Architect may bear at least partial responsibility, and for which the Owner has given a written explanation and set aside the disputed funds pending resolution of the dispute. Further, the Owner may delay any pending payment to the Architect until the Architect satisfactorily cures specific instances of (1) failure to adhere to the schedule for the Architect's work or (2) other non-responsiveness of the Architect to the needs of the Project.~~

§ 4.9.4 Records of Reimbursable Expenses that are to be invoiced to Owner, and of any services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

PAGE 6

§ 5.1 The Owner and Architect shall resolve any claim or cause of action arising out of or relating to this Agreement pursuant to the ~~mediation and arbitration provisions set forth in Sections 13.3 and 13.4~~ Article 13 of A295-2008.

§ 5.2 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, ~~but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 5.2.~~ law.

...

§ 6.1 If the Owner fails to make payments properly and legally due to the Architect in accordance with this Agreement, such failure shall be considered ~~substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement.~~ If the Architect elects to suspend services, the Architect shall give ~~seven~~ twenty-one (21) days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

...

§ 6.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect, compensated.

...

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located, subject to the Federal Arbitration Act as applicable, located.

#### PAGE 7

§ 8.1 The principal Architect with whom the Owner has contracted shall remain the principal contact relative to this Agreement, shall oversee the services rendered under this Agreement by his/her representative, and shall serve as the primary contact for issues or concerns related to the quality of delivered services by such representative. With the approval of the Owner, the Architect shall designate a representative authorized to act on behalf of the Architect with respect to the Project. The designated representative shall not be changed without the Owner's written consent, which consent shall not be unreasonably withheld.

§ 8.2 The Architect shall comply with the Design Criteria established and required by the South Carolina School Facilities Planning and Construction Guide. Architect shall contact water, sewer and other applicable utility authorities during the design phase to verify that its design complies with such authorities' requirements.

§ 8.3 The Architect shall prepare and distribute conference memoranda, meeting minutes, summaries of telephone conversations, documentation of site visits and site visit reports (with photographs) to maintain a comprehensive record of the Project. The field report of each Architect and/or consultant site visit, indicating the personnel visiting, the date and duration of the visit, the work observed, and deficiencies noted, shall be submitted electronically within three (3) business days of the field visit.

§ 8.4 Prompt written notice shall be given by the Architect to the Owner if the Architect becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

§ 8.5 The Architect will make presentations to the Board of Trustees as requested by the Owner.

§ 8.6 The Architect shall cooperate with any professional consultants or advisors retained by the Owner to assist the Owner with its role as owner.

§ 8.7 The Architect's cost of overnight delivery, mailing and/or delivering submittals, reports, or other documents to the appropriate parties in a timely manner when the Architect is required to respond, return, or transmit any document by the Contract Documents, is the responsibility of the Architect and included in the Basic Services Compensation.

§ 8.8 The Architect will serve as an advisor to the Owner's Selection Committee for the selection of the General Contractor(s), and in this capacity will (1) review and comment on the responses to the Owner's solicitation for the same in collaboration with the Owner's Representative and the Owner's Building Program Consultant, (2) attend meetings of the Selection Committee upon request, and (3) participate in any interviews of the respondents and any site visits to respondents' prior work, upon request of the Selection Committee.

§ 8.9 As part of the Basic Services provided by the Architect, during the eleventh (11th) month after the Date(s) of Substantial Completion of each Phase, the Architect shall visit the Project to review the Work and shall prepare a report to be issued to the Owner and Contractor, indicating Work to be corrected and warranty issues to be addressed by the Contractor. The report must be delivered by the Architect to the Contractor prior to the expiration of the Contractor's correction period. The Architect shall assist the Owner in taking necessary action to see that the deficiencies are corrected.



§ 8.10 Architect shall observe and provide to Owner a written report of the Contractor's checkout of utilities, operational systems and equipment for readiness and their start-up and testing.

§ 8.11 [Number not used.]

§ 8.12 Venue for any suit, action or proceeding arising out of or relating to the Agreement shall be proper only in the Court of Common Pleas for Spartanburg County, State of South Carolina. The Architect and the Architect's consultants and the Owner hereby waive and disclaim any and all right to a jury trial on any controversy arising from this Agreement. Architect and the Architect's consultants agree to be joined with every other party deemed necessary by the Owner for the full and proper examination, settlement or judgment of each dispute, claim, contract controversy, or civil action, whether in mediation, proceedings under the Owner's Procurement Code, or any court of competent jurisdiction. This paragraph is procedural only, and such joinder does not affect Architect's substantive legal position with regard to any other party.

§ 8.13 [Number not used.]

§ 8.14 The terms and conditions of this Agreement shall be governed by the Owner's Procurement Code and the laws of the State of South Carolina, which shall include, but not be limited to, the Architect being authorized and/or licensed to do business in the State of South Carolina. Acceptance of this Agreement the Architect agrees to subject himself/herself to the jurisdiction and process of the Owner's Procurement Code and the courts of the State of South Carolina as to all matters and disputes arising or to arise under this Agreement and the performance thereof. Any legal proceeding arising out of or relating to this Agreement shall include by consolidation, joinder, or joint filing any additional person or entity not a party to this Agreement to the extent necessary to the final resolution of the matter in controversy.

§ 8.15 The Owner shall have the right to audit the books and records of the Architect to the extent that the books and records relate to the performance of this Agreement and shall include all pricing data, change order or Agreement modifications for changes in cost. Such books and records related to this Agreement and to the Project files for those Projects covered under this agreement shall be maintained by the Architect for a period of three years from the date of final payment under this Agreement. This requirement shall apply to any Consultant performing services under the Architect's direction.

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On Authority of the Board of Trustees  
By: Dr. Scott Mercer  
Its: Superintendent

Todd Sease, AIA  
Principal

## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:44:30 on 02/04/2015 under Order No. 0551642066\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B195™ – 2008, Standard Form of Agreement Between Owner and Architect for Integrated Project Delivery, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)

Horry County Schools			First Floor			M.B. Kahn			Thompson - Turner		
Budget	Owner's Contingency		Proposal	Owner's Contingency	Over Budget	Proposal	Owner's Contingency	Over Budget	Proposal	Owner's Contingency	Over Budget
SES	26,000,000	1,000,000	38,303,991	-	12,303,991	30,470,000	-	4,470,000	30,696,000	-	4,696,000
CFMS	36,750,000	1,500,000	48,706,497	-	11,956,497	40,934,000	-	4,184,000	45,077,000	-	8,327,000
SJIS	36,750,000	1,500,000	50,628,137	-	13,878,137	41,852,000	-	5,102,000	43,933,000	-	7,183,000
SMS	31,100,000	1,250,000	45,058,439	-	13,958,439	37,808,000	-	6,708,000	38,425,000	-	7,325,000
MBMS	36,750,000	1,500,000	49,294,912	-	12,544,912	41,385,000	-	4,635,000	43,050,000	-	6,300,000
Total	167,350,000	6,750,000	231,991,976	-	64,641,976	192,449,000	-	25,099,000	201,181,000	-	33,831,000
Combo 3	110,250,000	4,500,000	140,916,040	-	30,666,040	120,596,000	-	10,346,000	130,739,400	-	20,489,400
Combo 4	141,350,000	5,750,000	182,645,778	-	41,295,778	156,060,000	-	14,710,000	168,353,777	-	27,003,777

			M.B. Kahn		
			Owner's		
			Proposal	Contingency	Over Budget
	Alternate 1	Alternate 2			
SES	Add Water Source Heat Pump	1,544,000	32,014,000	-	6,014,000
CFMS	Add Water Source Heat Pump	2,330,000	43,264,000	-	6,514,000
SJIS	Add Water Source Heat Pump	2,330,000	44,182,000	-	7,432,000
SMS	Add Water Source Heat Pump	2,052,000	39,860,000	-	8,760,000
MBMS	Add Water Source Heat Pump	2,330,000	43,715,000	-	6,965,000
Total			203,035,000	-	35,685,000
Combo 3	Add Water Source Heat Pump	6,990,000	127,586,000	-	17,336,000
Combo 4	Add Water Source Heat Pump	9,042,000	165,102,000	-	23,752,000

			M.B. Kahn		
			Owner's		
			Proposal	Contingency	Over Budget
	Alternate 1	Alternate 2			
SES	Add Water Source Heat Pump & on site Solar Panels	1,544,000 471,000	32,485,000	-	6,485,000
CFMS	Add Water Source Heat Pump & on site Solar Panels	2,330,000 558,000	43,822,000	-	7,072,000
SJIS	Add Water Source Heat Pump & on site Solar Panels	2,330,000 558,000	44,740,000	-	7,990,000
SMS	Add Water Source Heat Pump & on site Solar Panels	2,052,000 510,000	40,370,000	-	9,270,000
MBMS	Add Water Source Heat Pump & on site Solar Panels	2,330,000 558,000	44,273,000	-	7,523,000
Total			205,690,000	-	38,340,000
Combo 3	Add Water Source Heat Pump & on site Solar Panels	6,990,000 1,838,000	129,424,000	-	19,174,000
Combo 4	Add Water Source Heat Pump & on site Solar Panels	9,042,000 2,654,000	167,756,000	-	26,406,000

MBCH: 10 M: 10 ELEC: 144

	Schedule / 20 Points	Budget / 20 Points	Conceptual / 15 Points Design Implementation	HCS Ed Spec / 15 Points Implementation	Energy / 15 Points Positive — Implementation	Hi-Perf / 15 Points Implementation
first floor			10 2 2 1	10 3 2	10 3 2	10 3 2
Carolina Forest Middle			0 2 0 1	5 1 1		
③ -17 61	18	5	3	7	14	14
Socastee Middle (Smaller, No Site)			0 no site			
③ -15 59	18	5	1	7	14	14
Socastee Elementary			8 2 0 1	9 2 1		
③ -11 73	18	5	11	18	14	13
Myrtle Beach Middle (Demo + Zoning)			0 2 0 1			
③ -20 58	18	5	3	7	14	14
St. James Intermediate			0 2 0 1			
③ -17 61	18	5	3	7	14	14

MECH: 1/2 ELEC: 1/1

	Schedule / 20 Points	Budget / 20 Points	Conceptual / 15 Points Design Implementation ✓ <i>carbon footprint site new aesthetics</i>	HCS Ed Spec / 15 Points Implementation ✓ <i>Sealed, painted, carbon footprint site/Attitude Aesthetics</i>	Energy / 15 Points Positive Implementation ✓ <i>innovative, unlikely highest consumption not energy</i>	Hi-Perf / 15 Points Implementation <i>smart eff. energy simplest system direct</i>
KAHN						
Carolina Forest Middle ②② 76 -2 76	15	10	15	9 2 2 13	12	11
Socastee Middle (Smaller, No Site) ①① 74 74	15	10	no site 13	9 2 2 13	12	11
Socastee Elementary ②② 75 -9 75	15	10	4 2 2 1 14	9 2 2 13	12	11
Myrtle Beach Middle (Demo + Zoning) ② 76 -2 76	15	10	15	9 2 2 13	12	11
St. James Intermediate ② 76 -2 76	15	10	15	9 2 2 13	12	11

MECH: 13 ELEC: 15

	Schedule / 20 Points	Budget / 20 Points	Conceptual / 15 Points Design Implementation ✓ <i>check list site area scoping</i>	HCS Ed Spec / 15 Points Implementation <i>digital construction software 10 Admin. 5</i>	Energy / 15 Points Positive Implementation ✓ Control System -	Hi-Perf / 15 Points Implementation <i>high perf compliance Separate bid or all</i>
Thompson Turner						
Carolina Forest Middle ①① 78 78	15	8	15	14	13	13
Socastee Middle (Smaller, No Site) ②② 73 73	12	8	no site 13	14	13	13
Socastee Elementary ①① 84 84	20	8	15	14	13	14
Myrtle Beach Middle (Demo + Zoning) ①① 78 78	15	8	15	14	13	13
St. James Intermediate ①① 78 78	15	8	15	14	13	13

# In-budget Middle School Concept

## Reduced size of following spaces:

Secure Vestibule	Guidance Office
Reception	Assistant Principal Offices
Lobby	Studio (Learning Commons)
Principal's Conference	Book/Periodical Storage
Principal's Office	Science Labs
Bookkeeper Office	Science Prep Rooms
Vault	Library/Storage (Band)
ISS	Instrument Storage (Band)
SRO Room	Chorus
Office (Health Suite)	Gym
Toilet (Health Suite)	Storage (Gym)
Guidance Reception	Training Room
Guidance Conference	Health Classroom
Testing	Kitchen
Testing Storage	Dining/Seating
Records Vault	Chair Storage
Waccamaw Mental Health Room	Stage
Teacher Workrooms	Building Support/Mechanical
Many classrooms are interior rooms with no outside walls	

## Removed following spaces:

School Secretary Office	Resource Toilets
IT Office	Orchestra
Attendance Office	Provided 1 ESOL classroom
Admin Workroom	GT Classroom
Isolation Room (Health Suite)	Home Arts
Conference Room (Health Suite)	Industrial Tech
Toilet (Guidance Suite)	Storage (Electives)
Teacher Storage	Stage Ramp
Provided 2 Guidance Offices	Stage Storage
AP Waiting	Storage (Dining)
Instructional Coach	
Sound Booth (Learning Commons)	
Workroom (Learning Commons)	
Toilet (Learning Commons)	
Science Storage (Academics)	
Storage (Academics)	
Provided 2 Self-Contained Spec. Ed. Rooms in lieu of 4	
Provided 1 Toilet/Changing areas for Self-Contained in lieu of 2	
Provided 2 Resource Rooms in lieu of 4	

# 145,000 SF Middle School Concept

## Reduced size of following spaces:

All classrooms standard at 750 SF

All labs standard at 900 SF

## Removed following spaces:

2 distributed admin suites in lieu of 3

4 resource rooms in lieu of 3

Orchestra (on stage)

GT classroom

1 ESOL classroom in lieu of 2

Industrial Tech lab

Home Arts

(Should state 3 in lieu of 4)



# Conceptual Design Steering Committee Meeting

March 24, 2014

## PRESENT:

### Committee Members

Cindy Ambrose, Chief Academic Officer  
Dottie Brown, Executive Director of Elementary Education  
Matt Dean, Executive Director of Facilities  
Harvey Eisner, HCS Board Member  
Cindy Elsberry, Superintendent  
Jeffrey Garland, HCS Board Member  
Traci Hogan, Executive Director of Federal Programs  
H.T. Lee, Executive Director of Middle Schools  
James LaPier, Principal, Lakewood Elementary School  
Janice Morreale, HCS Board Member  
Barbara Schlidt, Coordinator of Library Media Programs and Grants  
Mark Wolfe, Coordinator of Design, Engineering, and Sustainability

### Others

Joe DeFeo, HCS Board Chairman  
Heather Gale, Horry Independent  
Vicki Grooms, The Sun News  
Rhonda Snowden, Administrative Assistant

Mark Wolfe opened the meeting and introduced Bill Bradley and Derk Jeffrey of SHW Group Architecture out of Charlottesville, Virginia. SHW Architecture shared a presentation with the goal of gathering information from Committee members relative to the goals and vision of the District as they relate to facilities and how they will support education now and in the future. The purpose of the committee, which is comprised of board members, facilities, district office, and building-level leaders, is to guide the design professionals by providing required information or access to key individuals who can provide required information.

The meeting tonight will be a flowing conversation between the Committee and the architects. We will set the stage today for the tours we will be going on. The purpose of the meeting is to begin to expand around school design and planning. The best way to accomplish that is through community dialogue. As members of this committee, you are experts on what matters most to you and what matters most to this community. And so, the planning process is about sharing what matters most to us and to come to a common understanding about what matters most

FILE COPY

here in Horry County. With planning, because it precedes designing, we can then make sure that the design reflects what matters here in Horry County.

Members of the Committee were asked to provide input and perspective and as advocates for this process, project their hopes, aspirations and vision for the future. Each member was asked to share for whom or what they are advocating.

1. Cindy Ambrose, Chief Academic Officer – I am advocating for those students who need us the most – the ones who may not have an adult advocate.
2. James LaPier, Principal of Lakewood Elementary – I am advocating for the principals of Horry County.
3. Neil James, School Board Member – I am an advocate for trying to find a balance between our needs, wants, and fiscal responsibility.
4. Mark Wolfe, Coordinator of Design, Engineering, and Sustainability – I am very interested in how the buildings can support the educational component.
5. Dottie Brown, Executive Director for Elementary Education – I am advocating for teachers and students at the elementary level, trying to make sure that we figure out what they most need and that we provide the best we are able to for them.
6. H.T. Lee – I want to look at the big picture for all students and not just the middle school students which I am in charge of – the whole picture. It's about all the kids. We need to try to make it equal.
7. Traci Hogan, and I work with special education and Title I schools – I am advocating for students with disabilities and for less advantaged students. I am concerned that when you go from one building to another that they be comparable and that special education students have the same things available to them as general education students. I'm very concerned that the location of their services be in the midst of all that is going on in a school so that they are not separated.
8. Barbara Schlidt, and I work with library and media programs – It's all about the students and the stakeholders in the school. The device has changed and our resources are changing from print to digital, etc., but it doesn't matter what the device is or where you're at, our students need to be information literate and they need to know how to read and how to access information and to determine if it's valid for their essential question, they need to be able to think, which could mean a space for them to work by themselves or it could be teamwork that is needed where they can collaborate in an idea room and maybe share and build because maybe they're going to create and be repurposing that information they have gathered. I think we need a student learning commons that is a grand central station of the school. In my vision of the grand central station, it is where everybody has a purpose and they understand what they're doing and there is always a flow in and out no matter what time of day.
9. Joe DeFeo, Board Chair – I'm going to reiterate on what Neil said. We have a fiscal responsibility of what we're going to spend and that has to match in with what we do for the students. I want to make sure that student achievement is kept really up there high on the list because in a recent conversation I asked how bad does having portables affect student achievement and I was told that it doesn't. I don't want to build a bunch

of portables, but I also want to go in and say when we do something to a particular classroom, when we look at it, we have to ask if this will help student achievement. I know everything we do doesn't directly affect student achievement, but if it's not centered around student achievement, I don't know what else it would have to center around. I would hate to go through this 21<sup>st</sup> Century school and three years from now look at the achievement at those schools and they are no better than any other school we've built because if this building is doing nothing but housing students, we can do that a lot easier than doing this. I like what we're doing, but at the end of the day, if a 19<sup>th</sup> Century building is getting just as much achievement as a 21<sup>st</sup> Century, then we missed an opportunity and I do not want that opportunity to be missed. At the end of the day, I would like to be able to believe that these schools that we build, as unfair as it may seem, student achievement is being achieved better in those schools because there is something there that we did that made a difference. If not, then we could have just built buildings, so I want to make sure that student achievement is out there or closing the achievement gap. That's what this should be about.

10. Jeffrey Garland, School Board Member – Two things, one which is technology. We are investing a lot of money on technology, the School Board and the District, so obviously I want that to be an important and integral part. We've got to balance everything we do with the funds we have available and our needs and try to take the funding we have available and to meet our greatest needs and get the best benefit we can out of that. We've got more needs than we've got money at this point I believe. Capacity relief and growth that we are having is a great need in the beach areas, primarily Carolina Forest and St. James areas, more specifically at the middle school level is where our capacity issues are coming in to play now.
11. Janice Morreale, School Board Member – So many people said so many great things that I agree with. I find it important to me to meet the needs of all the students from our special education through our high flyers and making sure we are meeting all their needs with whatever this building looks like.
12. Matt Dean in Facilities – Obviously I'm an advocate for the facilities side. I'm also an advocate for the process we've brought forth.
13. Cindy Elsberry, Superintendent – I think everyone has been advocated for, which is incorrect grammar, but I want to advocate for a building that will stand the test of time. I want to advocate for students who will inhabit this building twenty, thirty, forty years from now. I hope that they look back and say there must have been a really thoughtful group that planned this building because it's still serving the needs of education in 2040, and if we do that, then we will not only provide for the needs of our children today, but will provide for children of the future.
14. Harvey Eisner, School Board Member – I advocate for the people in AARP (senior citizens). I think the community is looking to the School Board to build buildings they can be proud of, not only from an exterior standpoint, but also from an interior standpoint, and also within the guidelines of fiscal responsibility. Too many of our senior citizens, this is important, and yet they also have that pride that comes with Horry County Schools. So I advocate for those people who are AARP.

15. Derk Jeffrey, Director of Planning with SHW Group – I advocate for a process that is open, transparent, thoughtful, creative, and as meaningful as it can be because that is the way to get the projects that you want and that is the way to create a school that is meaningful for many generations to come through community dialogue.
16. Bill Bradley, Principal Architect with SHW Group – I am advocating for leveraging this opportunity that you have to the fullest to support the broad spectrum of students today and in 25 years across the community.

Mr. Jeffrey added that a number of people spoke of getting a return on investment. There were also many comments that echo the District's core values. With good planning, we will get more for our resources.

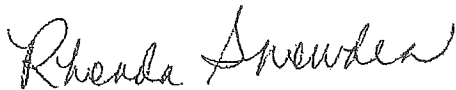
The meeting agenda was reviewed and a presentation was made by SHW Group Architecture. Educational planning is the steps that SHW Group Architecture helps their clients to take to move from the place that they are today to the place that they want to be. We call that the preferred image of the future, often times it's referred to as a vision, but the preferred image becomes clear through community dialogue. So these meetings that are scheduled, the upcoming school tours, and follow-up meetings, will bring clarity for everyone what that preferred image is. In the context of community dialogue, the collective intelligence is what makes the difference.

As a part of the activities of this meeting, participants were asked to imagine that they are visiting a school in Horry County in 2035 or 2040, and they are observing the learning that is taking place, and then write a postcard back to your present self about what you see. What is the most profound difference that you see, either in the learners or how teaching is being directed? All notes were gathered and will be reviewed by the architectural firm to determine any themes among the responses. When we meet again, we will tie those back to the language that is in the strategic plan.

Plans for the trip to Houston to visit schools were highlighted. The group will be visiting five schools. The group will continue these discussions on Thursday at the office of SHW Group. We will then visit Michael Null Middle School, which is a multi-story school. Later in the day, we will visit Mark Twain Elementary School, which is also multi-story. On Friday, we will visit Salyards Middle School, Pine Shadows Elementary, and Gloria Marshall Elementary. Following the tours, those who visit the schools are asked to report back and share photos with the Committee.

A copy of the PowerPoint presentation will be made available for reference purposes.

Respectfully submitted,



Rhonda Snowden

REDACTED



REDACTED

# REDACTED



REDACTED

## HCS RFP REPORT

Single Project Prices	HCS BUDGET	First Floor Original Price	First Floor price*	T.T. original price	Thompson Turner price	MBK original price	M.B. Kahn price*
CFMS	\$36,750,000.00	\$48,706,497.00	\$48,706,497.00	\$45,077,000.00	\$45,077,000.00	\$40,934,000.00	\$39,548,000.00
MBMS	\$36,750,000.00	\$49,242,812.00	\$49,294,912.00	\$43,050,000.00	\$43,050,000.00	\$41,385,000.00	\$39,998,000.00
SJIS	\$36,750,000.00	\$50,628,137.00	\$50,628,137.00	\$43,933,000.00	\$43,933,000.00	\$41,852,000.00	\$40,465,000.00
SMS	\$31,100,000.00	\$45,058,439.00	\$45,058,439.00	\$38,425,000.00	\$38,425,000.00	\$37,808,000.00	\$36,441,000.00
SES	\$26,000,000.00	\$38,303,991.00	\$38,303,991.00	\$30,696,000.00	\$30,696,000.00	\$30,040,000.00	\$29,319,000.00
subtotal	\$167,350,000.00		\$231,991,976.00		\$201,181,000.00		\$185,771,000.00
	also need to restore owner contingency & offsite work costs		* not shown: \$8.472M value and contingency reductions				* includes community solar & reduced owner contingencies set by MBK; does not include WSHP and onsite solar.
COMBO 3	CFMS, MBMS & SJIS	First Floor	\$140,916,040.00				
		Thompson Turner	\$130,739,400.00				
		MB Kahn	\$116,420,000.00				
COMBO 4	CFMS, MBMS, SJIS, SMS	First Floor	\$182,645,778.00				
		Thompson Turner	\$168,353,777.00				
		MB Kahn	\$150,535,000.00				
COMBO 5		First Floor	\$220,599,769.00	to budget subtotal: (\$53,249,769.00)			
		Thompson Turner	\$198,896,777.00	(\$31,546,777.00)			
		MB Kahn	\$178,443,000.00	(\$11,093,000.00)			
Others	SES & SMS	Thomspson Turner	\$68,775,395				
	SES & SJIS	Thomspson Turner	\$74,255,855				
	CFMS & MBMS	MB Kan	\$78,256,000				
WORKSHEET							
Project	current HCS BUDGET	Award Price	Variance				
CFMS	\$36,750,000.00						
MBMS	\$36,750,000.00						
SJIS	\$36,750,000.00						
SMS	\$31,100,000.00						
SES	\$26,000,000.00						
subtotal	\$167,350,000.00						
Owner contingency:	\$0.00						
Offsite Work:	\$0.00						
TOTAL:	\$167,350,000.00						

## HCS RFP REPORT

Single Project Prices	HCS BUDGET *	First Floor Original Price	First Floor price*	T.T. original price	Thompson Turner price	MBK original price A	M.B. Kahn price A*	MB Kahn price B*
CFMS	\$36,750,000.00	\$48,706,497.00	\$48,706,497.00	\$45,077,000.00	\$45,077,000.00	\$40,934,000.00	\$39,548,000.00	\$43,506,000.00
MBMS	\$36,750,000.00	\$49,242,812.00	\$49,294,912.00	\$43,050,000.00	\$43,050,000.00	\$41,385,000.00	\$39,998,000.00	\$43,946,000.00
SJIS	\$36,750,000.00	\$50,628,137.00	\$50,628,137.00	\$43,933,000.00	\$43,933,000.00	\$41,852,000.00	\$40,465,000.00	\$44,373,000.00
SMS	\$31,100,000.00	\$45,058,439.00	\$45,058,439.00	\$38,425,000.00	\$38,425,000.00	\$37,808,000.00	\$36,441,000.00	\$40,003,000.00
SES	\$26,000,000.00	\$38,303,991.00	\$38,303,991.00	\$30,696,000.00	\$30,696,000.00	\$30,040,000.00	\$29,319,000.00	\$32,234,000.00
subtotal	\$167,350,000.00		\$231,991,976.00		\$201,181,000.00		\$185,771,000.00	\$204,062,000.00
	*also need to restore owner contingency & offsite work costs		* not shown: \$8.472M value and contingency reductions			* includes community solar & reduced owner contingencies set by MBK; does not include WSHP, geothermal and onsite solar.		Price A plus: WSHP, geothermal allowance and on-site solar
COMBO 3	CFMS, MBMS & SJIS	First Floor	\$140,916,040.00					
		Thompson Turner	\$130,739,400.00					
		MB Kahn A	\$116,420,000.00					
		MB Kahn B	\$128,548,000.00					
COMBO 4	CFMS, MBMS, SJIS, SMS	First Floor	\$182,645,778.00					
		Thompson Turner	\$168,353,777.00					
		MB Kahn A	\$150,535,000.00					
		MB Kahn B	\$166,531,000.00					
COMBO 5		First Floor	\$220,599,769.00	to budget subtotal: (\$53,249,769.00)				
		Thompson Turner	\$198,896,777.00	(\$31,546,777.00)				
		MB Kahn A	\$178,443,000.00	(\$11,093,000.00)				
		MB Kahn B	\$197,487,000.00					
Others	SES & SMS	Thompson Turner	\$68,775,395					
	SES & SJIS	Thompson Turner	\$74,255,855					
	CFMS & MBMS	MB Kahn A	\$78,256,000					
	CFMS & MBMS	MB Kahn B	\$86,232,000.00					
WORKSHEET								
Project	current HCS BUDGET	Award Price	Variance					
CFMS	\$36,750,000.00							
MBMS	\$36,750,000.00							
SJIS	\$36,750,000.00							
SMS	\$31,100,000.00							
SES	\$26,000,000.00							
subtotal	\$167,350,000.00							
Owner								
contingency:	\$0.00							
Offsite Work:	\$0.00							
TOTAL:	\$167,350,000.00							

## HCS RFP REPORT

Single Project Prices	HCS BUDGET *	First Floor Original Price	First Floor price*	T.T. original price	Thompson Turner price	MBK original price A	M.B. Kahn price A*	MB Kahn price B*		
CFMS	\$36,750,000.00	\$48,706,497.00	\$48,706,497.00	\$45,077,000.00	\$45,077,000.00	\$40,934,000.00	\$39,548,000.00	\$43,506,000.00		
MBMS	\$36,750,000.00	\$49,242,812.00	\$49,294,912.00	\$43,050,000.00	\$43,050,000.00	\$41,385,000.00	\$39,998,000.00	\$43,946,000.00		
SJIS	\$36,750,000.00	\$50,628,137.00	\$50,628,137.00	\$43,933,000.00	\$43,933,000.00	\$41,852,000.00	\$40,465,000.00	\$44,373,000.00		
SMS	\$31,100,000.00	\$45,058,439.00	\$45,058,439.00	\$38,425,000.00	\$38,425,000.00	\$37,808,000.00	\$36,441,000.00	\$40,003,000.00		
SES	\$26,000,000.00	\$38,303,991.00	\$38,303,991.00	\$30,696,000.00	\$30,696,000.00	\$30,040,000.00	\$29,319,000.00	\$32,234,000.00		
subtotal	\$167,350,000.00		\$231,991,976.00		\$201,181,000.00		\$185,771,000.00	\$204,062,000.00		
	*also need to restore owner contingency & offsite work costs		* not shown: \$8.472M value and contingency reductions				* Includes community solar & reduced owner contingencies set by MBK; does not include WSHP, geothermal and onsite solar.	Price A plus: WSHP, geothermal allowance and on-site solar		
				Examples below:						
COMBO 3	CFMS, MBMS & SJIS	First Floor	\$140,916,040.00	FF x3 plus	SES TT	SMS TT	\$68,775,395.00	\$209,691,435.00	(\$42,341,435.00)	
		Thompson Turner	\$130,739,400.00	FFx3 plus	SES TT	SMS MBK B	\$67,137,000.00	\$208,053,040.00	(\$40,703,040.00)	
		MB Kahn A	\$116,420,000.00	TT x3 plus	SES FF	SMS MBK B	\$78,306,991.00	\$209,046,391.00	(\$41,696,391.00)	
		MB Kahn B	\$128,548,000.00	TT x3 plus	SES MBK B	SMS FF	\$77,292,439.00	\$208,031,839.00	(\$40,681,839.00)	
COMBO 4	CFMS, MBMS, SJIS, SMS	First Floor	\$182,645,778.00	FF x4 plus	SES TT		\$30,696,000.00	\$213,341,778.00	(\$45,991,778.00)	
		Thompson Turner	\$168,353,777.00	FFx4 plus	SES MBK B		\$32,234,000.00	\$214,379,778.00	(\$47,529,778.00)	
		MB Kahn A	\$150,535,000.00	TT x4 plus	SES MBK B		\$32,234,000.00	\$200,587,777.00	(\$33,237,777.00)	
		MB Kahn B	\$166,531,000.00	TT x4 plus	SES FF		\$38,303,991.00	\$206,657,768.00	(\$39,307,768.00)	
COMBO 5		First Floor	\$220,599,769.00						(\$53,249,769.00)	
		Thompson Turner	\$198,896,777.00						(\$31,548,777.00)	
		MB Kahn A	\$178,443,000.00						(\$11,093,000.00)	
		MB Kahn B	\$197,487,000.00						(\$30,137,000.00)	
Others	SES & SMS	Thomspson Turner	\$68,775,395							
	SES & SJIS	Thompson Turner	\$74,255,855							
	CFMS & MBMS	MB Kahn A	\$78,256,000							
	CFMS & MBMS	MB Kahn B	\$86,232,000.00							
WORKSHEET										
Project	current HCS BUDGET	Award Price	Variance							
CFMS	\$36,750,000.00									
MBMS	\$36,750,000.00									
SJIS	\$36,750,000.00									
SMS	\$31,100,000.00									
SES	\$26,000,000.00									
subtotal	\$167,350,000.00									
Owner contingency:	\$0.00	\$6,750,000.00								
Offsite Work:	\$0.00	TBD								
TOTAL:	\$167,350,000.00									

## HCS RFP REPDR1

Single Project Prices	HCS BUDGET	First Floor Original Price	First Floor price*	T.T. original price	Thompson Turner price	MBK original price	M.B. Kahn price*
CFMS	\$36,750,000.00	\$48,706,497.00	\$48,706,497.00	\$45,077,000.00	\$45,077,000.00	\$40,934,000.00	\$39,548,000.00
MBMS	\$36,750,000.00	\$49,242,812.00	\$49,294,912.00	\$43,050,000.00	\$43,050,000.00	\$41,385,000.00	\$39,998,000.00
SJIS	\$36,750,000.00	\$50,628,137.00	\$50,628,137.00	\$43,933,000.00	\$43,933,000.00	\$41,852,000.00	\$40,465,000.00
SMS	\$31,100,000.00	\$45,058,439.00	\$45,058,439.00	\$38,425,000.00	\$38,425,000.00	\$37,808,000.00	\$36,441,000.00
SES	\$26,000,000.00	\$38,303,991.00	\$38,303,991.00	\$30,696,000.00	\$30,696,000.00	\$30,040,000.00	\$29,319,000.00
subtotal	\$167,350,000.00		\$231,991,976.00		\$201,181,000.00		\$185,771,000.00
	also need to restore owner contingency & offsite work costs		* not shown: \$8.472M value and contingency reductions				* includes community solar & reduced owner contingencies set by MBK; does not include WSHP and onsite solar.
COMBO 3	CFMS, MBMS & SJIS	First Floor	\$140,916,040.00				
		Thompson Turner	\$130,739,400.00				
		MB Kahn	\$116,420,000.00				
COMBO 4	CFMS, MBMS, SJIS, SMS	First Floor	\$182,645,778.00				
		Thompson Turner	\$168,353,777.00				
		MB Kahn	\$150,535,000.00				
COMBO 5		First Floor	\$220,599,769.00	to budget subtotal: (\$53,249,769.00)			
		Thompson Turner	\$198,896,777.00	(\$31,546,777.00)			
		MB Kahn	\$178,443,000.00	(\$11,093,000.00)			
Others	SES & SMS	Thomspson Turner	\$68,775,395				
	SES & SJIS	Thomspson Turner	\$74,255,855				
	CFMS & MBMS	MB Kan	\$78,256,000				
WRKSHEET							
Project	current HCS BUDGET	Award Price	Variance				
CFMS	\$36,750,000.00						
MBMS	\$36,750,000.00						
SJIS	\$36,750,000.00						
SMS	\$31,100,000.00						
SES	\$26,000,000.00						
subtotal	\$167,350,000.00						
Dwner	\$0.00						
contingency:	\$0.00						
Offsite Work:	\$0.00						
TOTAL:	\$167,350,000.00						

Sheri L. Wainscott

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REDACTED

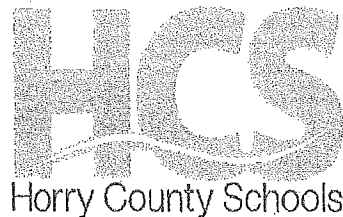
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## Written Determination

November 3, 2015

At its meeting on November 2, 2015, the Horry County Board of Education voted to make five separate awards for the construction of five schools: Carolina Forest Middle School, Myrtle Beach Middle School, St. James Intermediate School, Socastee Middle School, and Socastee Elementary School. The motion to make the awards also authorized and directed the Board Chair to execute a determination in writing that the proposals awarded are "most advantageous to the District, taking into consideration price and the evaluation factors set forth in the Request for Proposals," pursuant to Section IV.A.9.i. of the Procurement Code of Horry County Schools ("HCS") and directed the District administration to issue notices of intent to award upon execution of this determination in writing. The purpose of this written determination is to provide the citizens of HCS with a view of the District's decision-making process, so as to safeguard the quality and integrity of the contract awards through public accountability, by providing factual grounds and reasoning for the public to make an informed, objective review of these decisions. The Board's decision is meant to allow it to accomplish its goals and deadlines in a timely manner. Cf. *Sloan v. Greenville Co.*, 590 S.E.2d 338 (S.C. App. 2003). The motion was a discretionary decision of the legislative body governing the HCS.

1. The District issued a Request for Qualifications for design-build firms on February 26, 2015. Nine (9) firms responded, and the Selection Committee prequalified four firms as disclosed in the notice posted June 3, 2015.

2. The District issued a Request for Proposals (RFP) to the prequalified firms on June 24, 2015, which was supplemented by seven addenda. One firm later withdrew. Three firms, referred to as First Floor, Thompson-Turner, and M.B. Kahn, responded to the RFP by submitting proposals for each of the five schools by the deadline of September 3, 2015. There have been no protests of any aspect of the solicitation.

3. The Selection Committee ranked the proposals using the evaluation criteria and weightings assigned in the RFP. First Floor is the highest ranked proposer for each school and combined project, followed by Thompson-Turner and M.B. Kahn, with the following Committee summary total of points by school and three- and four-school combinations:



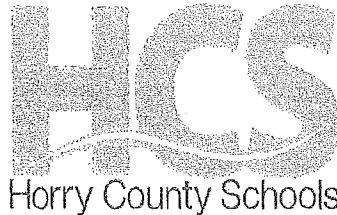
	M.B. Kahn	Thompson-Turner	First Floor
Carolina Forest Middle School (CFMS)	65.0	71.6	76.6
Myrtle Beach Middle School (MBMS)	64.6	71.3	76.7
St. James Intermediate School (SJIS)	64.5	71.2	76.9
Socastee Middle School (SMS)	64.8	71.7	75.7
Socastee Elementary (SES)	65.4	73.3	78.9
Combination 3 (CFMS, MBMS, SJIS)	62.6	69.7	76.3
Combination 4 (CFMS, MBMS, SJIS, SMS)	62.2	68.7	76.2

4. All proposals substantially exceeded the Board-approved budget criteria and accordingly, each proposal received the minimum of five (5) points out of the potential of twenty (20) points.

5. Pursuant to HCS Procurement Code Section IV.A.9.h, and the Board's motion adopted October 12, 2015, the District negotiated with each of the three firms in rank order to determine if any proposal could meet the design criteria, including the Board-approved original budget criteria. No negotiations were technically "satisfactory" under the Code for the reason that no price could be reduced to be within the Board-approved budget and still accomplish the other design criteria. However, the negotiations confirmed some price reductions and schedule compliance for all proposals. However, all proposals still significantly exceeded the previous Board-approved project budgets.

6. The Selection Committee ranked proposals on compliance with the conceptual design criteria. The Board finds that the conceptual designs incorporated in the First Floor proposals maintain the integrity of the Board-approved conceptual designs, in the relation of spaces including special education rooms and cooperative learning areas, with the most day lighting of classrooms and safety features, with reasonable adjustments to accomplish the energy positive and high performance criteria. The Board also finds that the First Floor proposals reflect careful examination of the HCS Educational Specifications, HCS programming requirements, and the work of the HCS Conceptual Design Steering Committee.

7. The fact that all of the proposals exceeded the previous Board-approved budgets establishes that the Board-approved budgets in the combined amount of \$167,350,000 did not adequately take into account the energy positive and high performance design criteria that was directed by the Board to be incorporated into the design of these projects through the Board's Written Determination adopted February 9, 2015. The Board's Capital Plan dated July 28, 2014, states that, "All budgets are estimated based upon 2013-14 market conditions. Inflation and escalation are not included in the budgets." An owner's contingency and off-site and other program costs also are necessary for the overall District budget for the five-school program. In other words, the Capital Plan budgets for the five projects were not adjusted for escalation, inflation, or the new design requirements.




8. The Board has emphasized, particularly in its motion of November 10, 2014, the importance of the energy positive and high performance criteria so that the District will have the most cost-effective and efficient buildings over the useful operating lives of the facilities, and this objective justifies and outweighs lower initial construction costs. "First costs" of construction have long been dominant in school construction. However, these are no longer an adequate basis for making long-term capital investments. The Board must consider the "life cycle costs" of school buildings that will be a part of HCS operations for several generations yet to come, particularly since school operating costs such as utilities directly affect the availability of school operating funds for educational programming. Life-cycle costs are inherent in the High Performance aspect of the Board's expectations for the projects. The prospects for permanently lower school operating costs, including through reduced overall energy consumption and the emerging opportunities for financial advantages to be gained through distributed energy distribution systems, justify consideration of the life-cycle costs of school buildings, of which initial design and construction costs are only a fraction. The Board finds that the First Floor proposals best addressed the Board's concerns with life-cycle costs.

9. The Board finds that the timing of the delivery of the new facilities is of utmost importance because of the fast growth of the District's student population. While after negotiations, all of the competitors promised to comply with the District's schedule, First Floor has always maintained that they will deliver all projects on time, and they have a proven track record of on-time delivery of their projects. The proposals from First Floor were also the most fully developed in terms of the complex and slow-moving process of land development regulatory permitting in Horry County, indicating sound management of the risk of regulatory delays.

10. The Board is making the awards and finding that the proposals by First Floor are the most advantageous to the District, taking into consideration price and the evaluation factors, in its capacity of the governing body of Horry County Schools.

11. The Board finds and concludes that First Floor submitted the highest ranked proposals for each of the five schools, that First Floor complied with the evaluation criteria of the RFP, that First Floor's project pricing is reasonable and justified based on the proposals, its combinations of proposals for pricing, and the commitments by First Floor as a part of this solicitation.

12. Each of the five schools are awarded to First Floor for a combined amount \$220,599,769, to be allocated in separate contracts for each school. The budget for the five-school program is established in the amount of \$240,349,769, which includes the construction contracts of \$220,599,769, and owner's contingency in the combined amount of \$6,750,000, and estimated off-site and other program costs of \$13,000,000.

 , Board Chairman November 9, 2015 , Date

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